

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CASE NO. 08-RC-174497

NATIONAL OILWELL VARCO, L.P.,

Employer,

and

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 95

Petitioner.

**EMPLOYER'S REQUEST FOR REVIEW TO THE
NATIONAL LABOR RELATIONS BOARD**

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TABLE OF CONTENTS

	Page
I. Procedural History	2
II. Statement of the Facts	3
III. The Employer's Objection #1 To The Election Should Have Been Sustained	7
A. The Union Unlawfully Threatened and Coerced Employees Via Facebook Chat	7
B. The Union's Encouragement, or at a Minimum, Lack of Discouragement, of Recording Chilled Employees' Section 7 Rights	12
IV. Conclusion	14
Certificate of Service	15

TABLE OF AUTHORITIES

AUTHORITY	PAGE(S)
Cases	
<i>Chicago Truck Drivers Local 101 (Bake-Line Products)</i> , 329 NLRB 247 (1999)	6, 11
<i>Connecticut Health Care Partners</i> , 325 NLRB 351, 368 (1998)	11
<i>Mike Yurosek & Son</i> , 292 NLRB 1074 (1989)	12
<i>Taylor Wharton Division</i> , 336 NLRB 157 (2001)	11
<i>Taylor Wharton Division</i> , 336 NLRB 157, 158 (2001)	7
<i>Whole Foods Market</i> , 363 NLRB No. 87 (2015).....	6, 13
Statutes, Regulations & Rules:	
National Labor Relations Act, 29 U.S.C. § 151, et. seq.	passim
Board Rules and Regulations, §102.67(c)	7

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Case 08-RC-174497

**INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 95,**

Petitioner

**EMPLOYER’S REQUEST FOR REVIEW OF REGIONAL DIRECTOR’S
DECISION AND CERTIFICATION OF REPRESENTATIVE**

In accordance with Section 102.67(c) of the National Labor Relation Board’s Rules and Regulations, National Oilwell Varco, L.P. (“Employer” or “NOV”) hereby submits this Request for Review of the Regional Director for the Region 8’s Decision and Certification of Representative (“Decision”) dated August 1, 2016 dismissing Petitioner’s Objections to Conduct Affecting the Election and certifying the International Union of Operating Engineers, Local 95 (“Petitioner” or “Union”) as the representative of certain of the Employer’s employees. (*See* Attachment 1).

The following compelling reasons require the National Labor Relations Board (“NLRB” or “Board”) to grant this request:

1. A substantial question of law or policy is raised because the Decision presents a departure from officially reported Board precedent and provides no basis in support for the Regional Director’s conclusions;

2. A substantial question of law or policy is raised because of the apparent absence of officially reported Board precedent to support the Regional Director's decision to reject the Employer's Objection; and/or
3. The Decision, wholly lacking in authority or support for its position, is clearly erroneous on the record and prejudicially affects the Employer's rights.

I. PROCEDURAL HISTORY

On or about April 20, 2016, the Petitioner filed a petition to represent inspectors, technicians, notch cutters, maintenance mechanics, team leads, and operators working but to exclude all other professional employees, technical employees, business and clerical employees, and all other non-professional employees as defined in the National Labor Relations Act ("the Act"). (*See* Attachment 2). Pursuant to a Stipulated Election Agreement, on May 12, 2016, Region 8 personnel conducted a secret ballot election in the above-captioned matter. The tally of ballots revealed 21 votes cast for the Union, 20 votes cast for no representation, and no void or challenged ballots. (*See* Attachment 3). The Employer timely filed an Objection to conduct affecting the results of the election. (*See* Attachment 4). On May 24, 2016, the Regional Director ordered a hearing on this Objection. (*See* Attachment 5). The hearing was held and completed on June 2, 2016.

On June 24, 2016, the Hearing Officer issued his Report on Objections, dismissing the Employer's Objection. (*See* Attachment 6). The Employer filed timely Exceptions to the Hearing Officer's Report. (*See* Attachment 7). On August 1, 2016, the Regional Director for Region 8 issued his Decision, rejecting the Employer's Objection and the precedent relied upon by the Hearing Officer, without providing any support for his summary adoption of the Hearing Officer's report. This Request for Review ensues as the Decision erroneously dismissed the

Employer's Objection and fails to provide any support for the Regional Director's position and instead, summarily adopts the Hearing Officer's Report even after rejecting all of the authority relied upon by the Hearing Officer.

II. STATEMENT OF FACTS

As the uncontroverted evidence presented at the hearing unequivocally established, during its organizing campaign, the Union sent messages via Facebook chat which threatened and coerced employees into participating in Union activities and interfered with their free choice. These threats were then coupled with the Union's encouragement (or at a minimum, acquiescence) in the announced tape recording of Employer meetings, chilling the employees' ability to freely ask questions for fear that they would otherwise be subject to reprisals if they were recorded supporting the Employer.

The Union's campaign consisted of threatening and coercing employees to attend meetings, creating a fear of reprisals and depriving employees of their free choice. This campaign "strategy" was evident in the Facebook chat messages sent by Union organizers Mike Cagney ("Cagney") and David Conklin ("Conklin") to a majority of the employees in the voting group in the week or so leading up to the election. Em. Ex. 1.¹ The messages are self-explanatory in that they demand employees attend the Union's meeting unless they were "in the hospital or working." Em. Ex. 1. The messages then went on to threaten that the Employer would drive by the meeting to engage in unlawful surveillance. *Id.* The Union threatened that if employees did not participate in the meeting, the Union would "step back," which employees took as a threat the Union would abandon its representation efforts or otherwise place them in a precarious position. *Id.*

¹ The Employer Exhibits referenced are attached hereto as Attachment 8.

As Team Leader Luigi Lombardi (“Lombardi”) testified at hearing, upon reading these text messages, he felt as if he did not have a choice whether to engage in or refrain from engaging in Union activities, as protected by Section 7 of the Act, but rather that he was required to attend the Union’s meetings, an indication of support toward the Union. Tr. 90.² On cross-examination, Lombardi confirmed that he did not understand that he would not be subject to repercussions from the Union if he did not attend the Union’s meeting – “they definitely intimidated me to go to that meeting, you know?” Tr. 98. Contrary to the Union’s insinuations that employees were not required to attend meetings or could leave the Facebook group at any time, Lombardi testified he was concerned that other employees knew where he lived and knew what kind of vehicle he drove and could try to get back at him based on his non-participation. Tr. 99. Regardless of the Union’s intent, as Lombardi testified, the messages had the effect of coercing, threatening, and intimidating employees. Such fear and intimidation interfered with Lombardi, and other employees’, ability to exercise their Section 7 rights under the Act. Moreover, the ability to walk away from threatening messages does not negate the threatening and intimidating nature of the message and therefore, the employees’ ability to leave the Facebook chat group is without consequence.

Moreover and very compelling is the fact that even Cagney acknowledged that his messages could be interpreted as threatening or otherwise interfering with employees’ free choice. On examination by Employer counsel, Cagney admitted that he could “see how [employees] could get [the impression that the Union was going to walk them down the path then leave them at the altar] from typed words.” Tr. 175-76; Em. Ex. 1. Similarly, Cagney admitted his statement demanding attendance at the Union meeting could be viewed as “get the numbers

² The cited transcript references are attached hereto as Attachment 9.

or else.” Tr. 176; Em. Ex. 1. If by the Union organizer’s own admission, the messages could be construed as threatening, the chilling effect of these threats on employees with no union organizing experience is amplified.

In an effort to gather evidence for the hearing, employee and Union bargaining committee member, Kenneth Priester (“Priester”)³ circulated a survey to select employees, attempting to gain support for the Union’s position that it did not in fact threaten or intimidate employees; however, even this “evidence” underscores the Employer’s position. Em. Exs. 2-6. Priester admitted that he only asked approximately 17 of his coworkers to respond to the survey and of those 17, at least three refused to sign in support of the Union. Tr. 126. The number of employees unwilling to sign the documentation may have been higher, in fact, as while Priester only admitted to three, there is no way to establish that in fact, 26 did not refuse to sign. The only evidence established by the surveys is that only 14 out of 40 actually supported the Union. While Priester attempted to infer that the employees refused to sign out of fear of reprisals from the Employer, it is just as believable that employees refused to sign out of fear of reprisals from the Union if they did not support the Union’s position and in fact, felt threatened and intimidated by the Union. If employees indeed felt intimidated by the Union during the course of the campaign, common sense dictates that those employees would also feel intimidated to sign a petition circulated by the Union’s self-professed negotiator, accusing the Union of intimidation and threats. Moreover, by his own admission, Priester only asked a fraction of employees, arguably because he knew the others would not agree with his position. In fact, as Lombardi

³ As just one example of the inconsistencies in Priester’s testimony, after acknowledging that he was a “negotiator” for the Union, Tr. 131, he later testified he had not been appointed or elected to any position by the Union. Tr. 147. He obviously obtained the position of “negotiator” by either election or appointment unless he was self-appointed and thus, he either lied about being a negotiator or not being appointed or elected as the two are internally inconsistent. With the exception of the surveys which were examined and verified by the Hearing Officer (and therefore indisputable as to their contents), Priester’s testimony was inconsistent and unbelievable.

testified, had he been asked to sign the petition, he would have indicated that he did feel threatened and intimidated by the Union's actions during the pre-election campaign period. Tr. 94-95; Em. Ex. 4.

If the threatening and intimidating messages were not enough, the Union then continued to chill the employees' free choice by acknowledging that its supporters were recording the Employer's meetings, meetings where employees could ask questions regarding the organizing process and unions in general, and the Union organizers did nothing to stop the recording but instead, encouraged the chilling actions. Em. Ex. 7. Once Union supporters announced on the Facebook chat that they were recording the Employer's meetings, instead of discouraging such actions or, at a minimum, taking the conversation offline to discuss the contents of the recording, Conklin responded with his email address, advertising the Union would listen to the recordings. *Id.*

When coupled with the other threatening and intimidating messages, it was obvious to employees that their support or non-support for the Union would be scrutinized and would be the basis for repercussions. Lombardi acknowledged that recordings would stifle his participation in meetings and even Cagney, a Union organizer, admitted the recordings could lead employees to be careful in what they're saying. Tr. 109, 190. Obviously the recordings, and subsequent announcing thereof, had the effect of chilling employees engaged in their Section 7 right to engage in or refrain from Union activity.

Notwithstanding the Union's misconduct, the Hearing Officer dismissed the Employer's Objection, relying on *Chicago Truck Drivers Local 101 (Bake-Line Products)*, 329 NLRB 247 (1999) for the proposition the Union's threats were not coercive and *Whole Foods Market*, 363 NLRB No. 87 (2015) in support of his position the Union's encouraged recording did not affect

the election. In its Exceptions to the Hearing Officer's Report, the Employer demonstrated why the precedent relied upon by the Hearing Officer was inapplicable and should not be used as a basis for support. The Regional Director agreed with the Employer that the precedent relied upon by the Hearing Officer was inapplicable to the facts at issue but nonetheless upheld the Hearing Officer's recommendation, without providing any additional support for his Decision. As the Regional Director fails to provide any support for his Decision, this Request for Review should be granted because, at a minimum, there is an apparent "absence of officially reported Board precedent" to support the Regional Director's decision to reject the Employer's Objections. Board Rules and Regulations, §102.67(c).

III. THE EMPLOYER'S OBJECTION #1 TO THE ELECTION SHOULD HAVE BEEN SUSTAINED

A. The Union Unlawfully Threatened and Coerced Employees Via Facebook Chat

In evaluating whether improper interference occurred under the National Labor Relations Act ("the Act"), the Board considers: (1) the number of incidents of misconduct; (2) the severity of the incidents and whether they were likely to cause fear among employees in the bargaining unit; (3) the number of employees in the bargaining unit subject to the misconduct; (4) the proximity of the conduct to the election date; (5) the degree of persistence of the misconduct in the minds of the voting unit employees; (6) the extent of dissemination; (7) the effect, if any, of misconduct by the opposing party to cancel out the effects of the original misconduct; (8) the closeness of the final vote; and (9) the degree to which the misconduct can be attributed to the party. *See, e.g., Taylor Wharton Division*, 336 NLRB 157, 158 (2001).

As set forth above, each of these factors weighs in strong favor of finding the Union's misconduct affected the election in the instant case. The evidence unequivocally showed that the

Union repeatedly, and on at least three separate dates, threatened employees. At least four employees, 10% of the voting unit, complained that they felt threatened by the Union's actions which occurred in the week preceding the vote. The Union made no efforts to remedy its actions or quell employee fears of threats, which were disseminated to a vast majority of employees. Moreover, there are no allegations that the Employer engaged in similar misconduct so as to offset the Union's misconduct which, in an election with a one-vote margin of victory, obviously affected the election. Finally, the misconduct is directly attributed to the Union, as the threats were all made by Union organizers, admitted Union employees. In applying the *Taylor Wharton* factors to the instant case, it is apparent the Union's threatening and coercive statements amounted to unlawful interference.

First, the Union sent numerous messages to employees conveying its message that employees must attend Union meetings "or else." At hearing, it was demonstrated that threatening messages were sent on at least three separate dates. (Tr. 193).

Second, it was undisputed at the hearing that the messages were intended to and did have a coercive effect on employees. Lombardi testified he felt as if his choice as to whether to engage in or refrain from engaging in Union activities was taken away. Even Union organizer Cagney acknowledged that his messages could be viewed by employees as threatening or otherwise interfering with employees' free choice:

Q. Get there to the meeting with numbers or we're taking a step back. That means we're going to leave you right here. We're going to leave you at the alter [sic]. We're going to walk you down this path, and then we're going to leave you at the alter [sic], right?

A. I don't believe that's what I was saying, no.

Q. Can you see how someone would interpret it that way, though?

A. Not really.

Q. That's not a reasonable way to look at the language that you wrote?

A. I can see how you could get that from typed words, yes.

* * *

Q. Get numbers or else; that's what that says, isn't it?

A. No.

Q. Could it be interpreted that way reasonably?

A. It could be interpreted that way. I guess.

(Tr. 175-76; Em. Ex. 1). Rather than just encouraging employees to participate in meetings and exercise their Section 7 rights, the Union went one step too far and threatened employees if they failed to exercise their rights in the way the Union demanded. Had the Union merely asked employees to participate, stressed the importance of attending, or even induced attendance with baked goods, such actions would have been permissible. But it did not stop there. It threatened employees. The effect of these threats is apparent as at least four members of the voting unit complained to the Employer that they felt threatened by the Union's messages. These were not messages that *were likely* to cause fear; they did in fact cause fear in employees.

Third, because the messages were sent via the Facebook chat group, a majority of employees were subjected to the Union's misconduct. As Cagney admitted, roughly 26 or 27 of the 40 eligible voters were on the Facebook chat group and were subjected to the Union's threats. (Tr. 170).

Fourth, the threats were disseminated in the days leading up to the election and were not so removed in time as to limit their effect. In fact, the threats were made on May 2, May 4, and

May 5, just days before the May 12 election. (Tr. 193). The intervening week was hardly sufficient time to diminish the taint of the threats.

Fifth, the misconduct was persistent enough in the minds of voting unit employees that they complained to the Employer. As the testimony revealed, at least four employees came to the Employer to complain that they felt threatened by the Union's threats and obviously sought for the threats to cease. (Tr. 40). This evidences the voting unit employees did not merely brush off the Union's threats or disregard them as just Union tactics. Instead, they went as far as mentioning the threats to the Employer and complaining they felt threatened.

Sixth, as noted above, the messages were directly conveyed to at least 26 or 27 voting unit members who participated in the Facebook chat group. (Tr. 170). In addition, it is likely that at least some of these individuals went back to the worksite and shared the messages with those individuals who are not on Facebook or not otherwise in the chat group. And, in case anyone missed one of the messages, the Union sent threatening messages on at least three separate dates, ensuring that the Facebook chat group members saw at least one of the threats.

Seventh, the Employer did not and is not alleged to have engaged in any misconduct during the organizing campaign which would have any effect to cancel out the Union's misconduct.

Eighth, as set forth above, and weighing significantly in the Employer's favor, the margin of victory for the Union was one lone vote. If the Union's misconduct convinced even one employee that they would be subject to reprisals from the Union if they did not vote for representation, this sole vote affected the final outcome of the election. It is well-established that the Board is more likely to set aside an election where the vote was close, and conversely, less likely to set aside an election where the vote was not close. *See, e.g. Connecticut Health Care*

Partners, 325 NLRB 351, 368 (1998) (“[T]he closeness of the vote is an especially significant factor”) (internal citations omitted). The election in the case was decided by the narrowest of margins, a single vote.

Finally, the misconduct is directly attributable to the Union as it was committed by admitted Union organizers Cagney and Conklin. There is no dispute the Union was responsible for the threats.

Under the *Taylor Wharton* standard and in light of the undisputed evidence presented at the hearing, it is apparent the Union engaged in unlawful coercive conduct that affected the election in this matter. However, the Regional Director refused to provide any basis for his finding to the contrary. The Hearing Officer correctly determined the Employer met its burden of establishing “a few prongs of the [nine-point] test [described in *Taylor Wharton Division*, 336 NLRB 157 (2001)] favor the Employer’s position (i.e., dissemination, the closeness of the final vote, and the degree to which the objectionable conduct is attributable to the Union).” (Hearing Officer’s Report at 7). The Hearing Officer nonetheless determined the Union’s conduct was not questionable or coercive and did not serve as a basis for overturning the election.

In reaching his decision, the Hearing Officer relied on *Chicago Truck Drivers Local 101 (Bake-Line Products)*, 329 NLRB 247 (1999), a case rightfully noted by the Regional Director as not directly on point with this case. The Regional Director noted his agreement with the Employer’s position that the case law cited was inapplicable and rejected the Hearing Officer’s reliance thereon. Nonetheless, the Regional Director affirmed the Hearing Officer’s conclusions but without providing any independent basis for his determination that the Union’s conduct was not coercive or was otherwise proper. Instead, the Regional Director, in a footnote, summarily

accepts the conclusion reached by the Hearing Officer's faulty logic, the faulty logic he rejected two sentences previously.

In affirming the Hearing Officer but rejecting his rationale, the Regional Director failed to provide any support for his Decision. Instead, he made the conclusory statement "that the conduct alleged to be objectionable was not coercive and therefore did not affect the outcome of the election" without any further explanation. (Attachment 1, p. 1). The Regional Director failed to apply the well-established *Taylor Wharton* factors or otherwise provide any analysis as to how he reached his conclusion. Summarily accepting the Hearing Officer's finding after rejecting his rationale for such finding fails to provide any guidance as to the Board precedent relied upon by the Regional Director. As such, it must be presumed that the Regional Director failed to provide any support because his decision represents either a departure from well-established Board precedent or is an admission as to the apparent absence of officially reported Board precedent to support the Regional Director's Decision.

B. The Union's Encouragement, or at a Minimum, Lack of Discouragement, of Recording Chilled Employees' Section 7 Rights.

In addition to the Facebook chat threats, the Union encouraged employees to record the Employer's meetings with employees, chilling their coworkers' ability to freely ask questions and engage in Section 7 activities. This recording of employees, when coupled with other threats, is sufficient to set aside a close election. For instance, in *Mike Yurosek & Son*, 292 NLRB 1074 (1989), the Board found the union agent's photographing of employees and where "no explanation was provided to employees while pictures were being taken to assuage their fears that the pictures would be the basis for future reprisals" was improper conduct sufficient to warrant a new election where the union won by mere two votes. While in *Mike Yurosek & Sons*

the recording at issue was photographing, the same rationale applies to tape recording or video recording where employees are made aware of the existence of such recordings but not the purpose for which it is being used.

The Regional Director nonetheless rejected the Employer's Objection to this conduct, asserting, among other things, there was no evidence the employees involved in the recording were Union agents or that the Union could not be held accountable for their actions. This conclusory statement, again without any analysis, is without merit. As noted in footnote 3, *supra*, Priester was either elected or appointed as a Union representative, serving on the negotiating team. While Priester later attempted to deny this relationship, it was an apparent attempt to avoid any finding that he was an agent of the Union but wholly disingenuous. Accordingly Priester is and should be found to be an agent of the Union and the Union should not be excused from the effects of his misconduct.

The Regional Director's dismissal of the Employer's Objection should further be reviewed as the Regional Director again rejected the Hearing Officer's reliance on *Whole Foods Market*, 363 NLRB No. 87 (2015) in support of his Decision but provides no alternative basis in fact or in law in support of his position. As noted above, he instead provides a conclusory statement that "there was nothing coercive about the conduct the employees engaged in." (Attachment 1, p. 1). The Regional Director failed to provide any Board precedent for his conclusion or even state the facts on which he relied in making his decision. He merely notes in a footnote that he is rejecting the theory set forth by the Hearing Officer but affirming his ultimate determination. Such conclusory statements fail to properly meet the Board's standards and it must be assumed the Regional Director is either deviating from Board precedent or there is

no precedent in support of his Decision. Under either of these scenarios, the Employer's Request for Review should be granted.

IV. CONCLUSION

For those reasons outlined above, the Employer respectfully requests that this Request for Review be granted.

Respectfully submitted,

**OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.**

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Dated: August 15, 2016

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**NATIONAL OILWELL VARCO, L.P.,
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Case No. 08-RC-174497

and

**INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 95
Petitioner.**

Filed Electronically with NLRB

CERTIFICATE OF SERVICE

I certify that on August 15, 2016, a copy of the foregoing Request for Review was *Electronically Filed* on the NLRB's website <http://www.nlr.gov>.

Also, I do hereby certify that a true and correct copy of the within Request for Review has been served on the following individuals by email this 15th day of August 2016: Marianne Oliver at moliver@lawgol.com and Robert Eberle at bob@elaborlaw.com.

/s/ Christopher E. Moore
Christopher E. Moore, Esq.

25778356.1

Attachment 1

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

NATIONAL OILWELL VARCO, L.P.

Employer

and

Case 08-RC-174497

**INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 95**

Petitioner

**DECISION AND
CERTIFICATION OF REPRESENTATIVE**

Pursuant to a Stipulated Election Agreement, an election was conducted on May 12, 2016 to determine whether a unit of employees of the Employer wished to be represented for purposes of collective bargaining by the Petitioner. The tally of votes shows that of the 41 eligible voters, 21 cast votes for the Petitioner, 20 cast votes against the Petitioner, and there were no challenged ballots.

On May 29, 2016, the Employer filed a timely objection to the election. Subsequently, a hearing on the objection was held on June 2, 2016. The Hearing Officer issued a Report on Objections on June 24 in which he recommended overruling the objection. On July 8, the Employer filed timely exceptions to the Hearing Officer's Report.

Pursuant to Section 102.69 of the Board's Rules, I have considered the record and the Hearing Officer's Report in light of the Employer's exceptions and arguments. I have decided to adopt the Hearing Officer's findings¹ and recommendations and find that a certification of representative should be issued.²

¹ The Employer does not dispute any of the factual findings of the Hearing Officer but rather bases its objections on his legal analysis and conclusions.

² Regarding the Employer's First Exception:

I agree with the Employer that *Chicago Truck Drivers Local 101 (Bake-Line Products)*, 329 NLRB 247 (1999), a case relied on by the Hearing Officer, is not directly on point with the facts of the instant case. As a result, I do not rely on that case. Nevertheless, I agree with the Hearing Officer for the reasons he stated in his Report that the conduct alleged to be objectionable was not coercive and therefore did not affect the outcome of the election.

Regarding the Employer's Second Exception:

In affirming the Hearing Officer, I do not rely on *Whole Foods Market*, 363 NLRB No. 87 (2015), a case cited by him in his Report. Nonetheless, I agree with the Hearing Officer that there was nothing coercive about the conduct the employees engaged in and no evidence that the conduct affected the election outcome. Furthermore, I agree with the Hearing Officer that there was no evidence of an agency relationship between the employee/actors and the Union and thus the Union cannot be held accountable for their conduct. Moreover, the Employer offers no legal authority for its assertion that the Union had an obligation to intervene and put a stop to the employees' conduct.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 95, and that it is the exclusive representative of all the employees in the following bargaining unit:

All full -time and regular part -time NDT positions in the old and new mills including inspectors, technicians, notch cutters, maintenance, mechanics, team leads, and operators but excluding all other non —professional employees, professional employees, technical employees, business and clerical employees, managerial employees, temporary employees, guards and supervisors as defined in the Act.

REQUEST FOR REVIEW

Pursuant to Section 102.69(c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington, DC, a request for review of this decision. The request for review must conform to the requirements of Sections 102.67(e) and (i)(1) of the Board's Rules and must be received by the Board in Washington by August 15, 2016. If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the Request for Review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated at Cleveland, Ohio, this 1st day of August, 2016.

/s/Allen Binstock

Allen Binstock
Regional Director, Region 8
National Labor Relations Board

Attachment 2

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
RC PETITION

DO NOT WRITE IN THIS SPACE

Case No.

Date Filed

INSTRUCTIONS: Unless e-Filed using the Agency's website, www.nlr.gov, submit an original of this Petition to an NLRB office in the Region in which the employer concerned is located. The petition must be accompanied by both a showing of interest (see 6b below) and a certificate of service showing service on the employer and all other parties named in the petition of: (1) the petition; (2) Statement of Position form (Form NLRB-505); and (3) Description of Representation Case Procedures (Form NLRB 4812). The showing of interest should only be filed with the NLRB and should not be served on the employer or any other party.

1. PURPOSE OF THIS PETITION: RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees. The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

2a. Name of Employer N.O.V. Tuboscope		2b. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code) 2669 Martin Luther King Jr. Blvd., Youngstown, OH 44510	
3a. Employer Representative - Name and Title Belinda Armstrong		3b. Address (If same as 2b - state same) 2835 Holmes Road, Houston, Texas 77051	
3c. Tel. No. (713) 799-5242	3d. Cell No. (504) 220-1589	3e. Fax No. (713) 351-5399	3f. E-Mail Address belinda.armstrong@nov.com
4a. Type of Establishment (Factory, mine, wholesaler, etc.) Pipe Mill Factory		4b. Principal product or service NDT	5a. City and State where unit is located: Youngstown, Ohio
5b. Description of Unit Involved Included: All full-time and regular part-time NDT positions in new mill including inspectors, technicians, notch cutters, maintenance mechanics, team leads, and operators. Excluded: All other professional employees, technical employees, business and clerical employees, and all other non-professional employees as defined by the Act.			6a. No. of Employees in Unit: 35 6b. Do a substantial number (30% or more) of the employees in the unit wish to be represented by the Petitioner? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

Check One: ☐ 7a. Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about _____ (Date) (If no reply received, so state).
☐ 7b. Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8a. Name of Recognized or Certified Bargaining Agent (If none, so state).		8b. Address	
8c. Tel No.	8d. Cell No.	8e. Fax No.	8f. E-Mail Address
8g. Affiliation, if any		8h. Date of Recognition or Certification	8i. Expiration Date of Current or Most Recent Contract, if any (Month, Day, Year)

9. Is there now a strike or picketing at the Employer's establishment(s) involved? _____ If so, approximately how many employees are participating? _____
(Name of labor organization) _____, has picketed the Employer since (Month, Day, Year) _____.

10. Organizations or individuals other than Petitioner and those named in items 8 and 9, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in the unit described in item 5b above. (If none, so state)

10a. Name	10b. Address	10c. Tel. No.	10d. Cell No.
		10e. Fax No.	10f. E-Mail Address
11. Election Details: If the NLRB conducts an election in this matter, state your position with respect to any such election.		11a. Election Type: <input checked="" type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail	
11b. Election Date(s): 5-12-16	11c. Election Time(s): 7:15 am to 8:15 am; 7:15 pm to 8:15 pm	11d. Election Location(s): On site where available	
12a. Full Name of Petitioner (including local name and number) International Union of Operating Engineers Local 95		12b. Address (street and number, city, state, and ZIP code) 300 Saline St., Pittsburgh, PA 15207	
12c. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (if none, so state) International Union of Operating Engineers AFL-CIO			

12d. Tel No. (412) 422-4702	12e. Cell No.	12f. Fax No. (412) 422-4721	12g. E-Mail Address
13. Representative of the Petitioner who will accept service of all papers for purposes of the representation proceeding.			
13a. Name and Title Marianne Oliver, Esquire		13b. Address (street and number, city, state, and ZIP code) 223 Fourth Ave., 10th Floor, Pittsburgh, PA 15222	
13c. Tel No. (412) 391-9770	13d. Cell No.	13e. Fax No.	13f. E-Mail Address moliver@lawgol.com

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print) David R. Cunklin	Signature	Title Business Agent, IUOE Local 95	Date 4-20-16
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WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

**REVIEW THE FOLLOWING IMPORTANT INFORMATION
BEFORE FILLING OUT A STATEMENT OF POSITION FORM**

Completing and Filing this Form: The Notice of Hearing indicates which parties are responsible for completing the form. If you are required to complete the form, you must have it signed by an authorized representative and file a completed copy (including all attachments) with the RD and serve copies on all parties named in the petition by the date and time established for its submission. If more space is needed for your answers, additional pages may be attached. If you have questions about this form or would like assistance in filling out this form, please contact the Board agent assigned to handle this case. **You may E-File your Statement of Position at www.nlrb.gov, but unlike other e-Filed documents, it will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition was filed.**

Note: Non-employer parties who complete this Statement of Position are NOT required to complete items 8f and 8g of the form, or to provide a commerce questionnaire or the lists described in item 7. In RM cases, the employer is NOT required to complete items 3, 5, 6, and 8a-8e of the form.

Required Lists: The employer's Statement of Position must include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing. If the employer contends that the proposed unit is inappropriate, the employer must separately list the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit to make it an appropriate unit. The employer must also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department). Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at <http://www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015>.

Consequences of Failure to Supply Information: Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations. Section 102.66(d) provides as follows:

A party shall be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party shall be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in §§102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
STATEMENT OF POSITION

DO NOT WRITE IN THIS SPACE	
Case No.	Date Filed

INSTRUCTIONS: Submit this Statement of Position to an NLRB Office in the Region in which the petition was filed and serve it and all attachments on each party named in the petition in this case such that it is received by them by the date and time specified in the notice of hearing.
Note: Non-employer parties who complete this form are NOT required to complete items 8f or 8g below or to provide a commerce questionnaire or the lists described in item 7. In RM cases, the employer is NOT required to respond to items 3, 5, 6, and 8a-8e below.

1a. Full name of party filing Statement of Position		1c. Business Phone:	1e. Fax No.:
1b. Address (Street and number, city, state, and ZIP code)		1d. Cell No.:	1f. e-Mail Address
2. Do you agree that the NLRB has jurisdiction over the Employer in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No (A completed commerce questionnaire (Attachment A) must be submitted by the Employer, regardless of whether jurisdiction is admitted)			
3. Do you agree that the proposed unit is appropriate? <input type="checkbox"/> Yes <input type="checkbox"/> No (If not, answer 3a and 3b.)			
a. State the basis for your contention that the proposed unit is not appropriate. (If you contend a classification should be excluded or included briefly explain why, such as shares a community of interest or are supervisors or guards.)			
b. State any classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit. Added _____ Excluded _____			
4. Other than the individuals in classifications listed in 3b, list any individual(s) whose eligibility to vote you intend to contest at the pre-election hearing in this case and the basis for contesting their eligibility.			
5. Is there a bar to conducting an election in this case? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, state the basis for your position.			
6. Describe all other issues you intend to raise at the pre-election hearing.			
7. The employer must provide the following lists which must be alphabetized (overall or by department) in the format specified at http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015 . (a) A list containing the full names, work locations, shifts and job classification of all individuals in the proposed unit as of the payroll period immediately preceding the filing of the petition who remain employed as of the date of the filing of the petition. (Attachment B) (b) If the employer contends that the proposed unit is inappropriate the employer must provide (1) a separate list containing the full names, work locations, shifts and job classifications of all individuals that it contends must be added to the proposed unit, if any to make it an appropriate unit, (Attachment C) and (2) a list containing the full names of any individuals it contends must be excluded from the proposed unit to make it an			
State your position with respect to the details of any election that may be conducted in this matter. 8a. Type: <input type="checkbox"/> Manual <input type="checkbox"/> Mail <input type="checkbox"/> Mixed Manual/Mail			
8b. Date(s)	8c. Time(s)	8d. Location(s)	
8e. Eligibility Period (e.g. special eligibility formula)	8f. Last Payroll Period Ending Date	8g. Length of payroll period <input type="checkbox"/> Weekly <input type="checkbox"/> Biweekly <input type="checkbox"/> Other (specify length)	
9. Representative who will accept service of all papers for purposes of the representation proceeding			
9a. Full name and title of authorized representative		9b. Signature of authorized representative	9c. Date
9d. Address (Street and number, city, state, and ZIP code)			9e. e-Mail Address
9f. Business Phone No.:		9g. Fax No.	9h. Cell No.

WILLFUL FALSE STATEMENTS ON THIS STATEMENT OF POSITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. Code, Title 18, Section 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. Section 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation proceedings. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (December 13, 2006). The NLRB will further explain these uses upon request. Failure to supply the information requested by this form may preclude you from litigating issues under 102.66(d) of the Board's Rules and Regulations and may cause the NLRB to refuse to further process a representation case or may cause the NLRB to issue you a subpoena and seek enforcement of the subpoena in federal court.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

**DESCRIPTION OF REPRESENTATION CASE PROCEDURES
IN CERTIFICATION AND DECERTIFICATION CASES**

The National Labor Relations Act grants employees the right to bargain collectively through representatives of their own choosing and to refrain from such activity. A party may file an RC, RD or RM petition with the National Labor Relations Board (NLRB) to conduct a secret ballot election to determine whether a representative will represent, or continue to represent, a unit of employees. An **RC** petition is generally filed by a union that desires to be certified as the bargaining representative. An **RD** petition is filed by employees who seek to remove the currently recognized union as the bargaining representative. An **RM** petition is filed by an employer who seeks an election because one or more individuals or unions have sought recognition as the bargaining representative, or based on a reasonable belief supported by objective considerations that the currently recognized union has lost its majority status. This form generally describes representation case procedures in RC, RD and RM cases, also referred to as certification and decertification cases.

Right to be Represented – Any party to a case with the NLRB has the right to be represented by an attorney or other representative in any proceeding before the NLRB. A party wishing to have a representative appear on its behalf should have the representative complete a Notice of Appearance (Form NLRB-4701), and E-File it at www.nlrb.gov or forward it to the NLRB Regional Office handling the petition as soon as possible.

Filing and Service of Petition – A party filing an RC, RD or RM petition is required to serve a copy of its petition on the parties named in the petition along with this form and the Statement of Position form. The petitioner files the petition with the NLRB, together with (1) a certificate showing service of these documents on the other parties named in the petition, and (2) a showing of interest to support the petition. The showing of interest is not served on the other parties.

Notice of Hearing – After a petition in a certification or decertification case is filed with the NLRB, the NLRB reviews both the petition and the required showing of interest for sufficiency, assigns the petition a case number, and promptly sends letters to the parties notifying them of the Board agent who will be handling the case. In most cases, the letters include a Notice of Representation Hearing. Except in cases presenting unusually complex issues, this pre-election hearing is set for a date 8 days (excluding intervening federal holidays) from the date of service of the notice of hearing. Once the hearing begins, it will continue day to day until completed absent extraordinary circumstances. The Notice of Representation Hearing also sets the due date for filing and serving the Statement(s) of Position. Included with the Notice of Representation Hearing are a copy of the petition, this form, a Statement of Position form, a Notice of Petition for Election, and a letter advising how to contact the Board agent who will be handling the case and discussing those documents.

Hearing Postponement: The regional director may postpone the hearing for up to 2 business days upon request of a party showing special circumstances and for more than 2 business days upon request of a party showing extraordinary circumstances. A party wishing to request a postponement should make the request in writing and set forth in detail the grounds for the request. The request should include the positions of the other parties regarding the postponement. The request should be filed with the regional director. E-Filing the request is preferred, but not required. A copy of the request must be served simultaneously on all the other parties, and that fact must be noted in the request.

Statement of Position Form and List(s) of Employees – The Statement of Position form solicits commerce and other information that will facilitate entry into election agreements or streamline the pre-election hearing if the parties are unable to enter into an election agreement. As part of its Statement of Position form, the employer also provides a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit. If the employer contends that the proposed unit is not appropriate, the employer must separately list the same information for all individuals that the employer contends must be added to the proposed unit to make it an appropriate unit, and must further indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. These lists must be alphabetized (overall or by department).

Unless the employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word, the first column of the table must begin with each employee's last name, and the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be

used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

Ordinarily the Statement of Position must be filed with the Regional Office and served on the other parties such that it is received by them by noon on the business day before the opening of the hearing. The regional director may postpone the due date for filing and serving the Statement of Position for up to 2 business days upon request of a party showing special circumstances and for more than 2 business days upon request of a party showing extraordinary circumstances. The Statement of Position form may be E-Filed but, unlike other E-Filed documents, will *not* be timely if filed on the due date but after noon in the time zone of the Region where the petition is filed. Consequences for failing to satisfy the Statement of Position requirement are discussed on the following page under the heading "Preclusion."

A request to postpone the hearing will not automatically be treated as a request for an extension of the Statement of Position due date. If a party wishes to request both a postponement of the hearing and a postponement of the Statement of Position due date, the request must make that clear and must specify the reasons that postponements of both are sought.

Posting and Distribution of Notice of Petition for Election – Within 2 business days after service of the notice of hearing, the employer must post the Notice of Petition for Election in conspicuous places, including all places where notices to employees are customarily posted, and must also distribute it electronically if the employer customarily communicates with its employees electronically. The employer must maintain the posting until the petition is dismissed or withdrawn, or the Notice of Petition for Election is replaced by the Notice of Election. The employer's failure properly to post or distribute the Notice of Petition for Election may be grounds for setting aside the election if proper and timely objections are filed.

Election Agreements – Elections can occur either by agreement of the parties or by direction of the regional director or the Board. Three types of agreements are available: (1) a Consent Election Agreement (Form NLRB-651); (2) a Stipulated Election Agreement (Form NLRB-652); and (3) a Full Consent Agreement (Form NLRB-5509). In the Consent Election Agreement and the Stipulated Election Agreement, the parties agree on an appropriate unit and the method, date, time, and place of a secret ballot election that will be conducted by an NLRB agent. In the Consent Agreement, the parties also agree that post-election matters (election objections or determinative challenged ballots) will be resolved with finality by the regional director; whereas in the Stipulated Election Agreement, the parties agree that they may request Board review of the regional director's post-election determinations. A Full Consent Agreement provides that the regional director will make final determinations regarding all pre-election and post-election issues.

Hearing Cancellation Based on Agreement of the Parties – The issuance of the Notice of Representation Hearing does not mean that the matter cannot be resolved by agreement of the parties. On the contrary, the NLRB encourages prompt voluntary adjustments and the Board agent assigned to the case will work with the parties to enter into an election agreement, so the parties can avoid the time and expense of participating in a hearing.

Hearing – A hearing will be held unless the parties enter into an election agreement approved by the regional director or the petition is dismissed or withdrawn.

Purpose of Hearing: The purpose of a pre-election hearing is to determine if a question of representation exists. A question of representation exists if a proper petition has been filed concerning a unit appropriate for the purpose of collective bargaining or, in the case of a decertification petition, concerning a unit in which a labor organization has been certified or is being currently recognized by the employer as the bargaining representative. Disputes concerning individuals' eligibility to vote or inclusion in an appropriate unit ordinarily need not be litigated or resolved before an election is conducted.

Issues at Hearing: Issues that might be litigated at the pre-election hearing include: jurisdiction; labor organization status; bars to elections; unit appropriateness; expanding and contracting unit issues; inclusion of professional employees with nonprofessional employees; and eligibility formulas. At the hearing, the Statement of Position will be received into evidence and, prior to the introduction of further evidence, all other parties will respond on the record to each issue raised in the Statement. The hearing officer will not receive evidence concerning any issue as to which the parties have not taken adverse positions, except for evidence regarding the Board's jurisdiction over the employer and evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the regional director determines that record evidence is necessary.

Preclusion: At the hearing, a party will be precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party's Statement of Position or response, except that no party will be precluded from contesting or presenting evidence relevant to the Board's statutory jurisdiction to process the petition. Nor shall any party be precluded, on the grounds that a voter's eligibility or inclusion was not contested at the pre-election hearing, from challenging the eligibility of any voter during the election. If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. As set forth in §102.66(d) of the Board's rules, if the employer fails to timely furnish the lists of employees, the employer will be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Conduct of Hearing: If held, the hearing is usually open to the public and will be conducted by a hearing officer of the NLRB. Any party has the right to appear at any hearing in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record evidence of the significant facts that support the party's contentions and are relevant to the existence of a question of representation. The hearing officer also has the power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence. Witnesses will be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Parties appearing at any hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, should notify the regional director as soon as possible and request the necessary assistance.

Official Record: An official reporter will make the only official transcript of the proceedings and all citations in briefs or arguments must refer to the official record. (*Copies of exhibits should be supplied to the hearing officer and other parties at the time the exhibit is offered in evidence.*) All statements made in the hearing room will be recorded by the official reporter while the hearing is on the record. If a party wishes to make off-the-record remarks, requests to make such remarks should be directed to the hearing officer and not to the official reporter. After the close of the hearing, any request for corrections to the record, either by stipulation or motion, should be forwarded to the regional director.

Motions and Objections: All motions must be in writing unless stated orally on the record at the hearing and must briefly state the relief sought and the grounds for the motion. A copy of any motion must be served immediately on the other parties to the proceeding. Motions made during the hearing are filed with the hearing officer. All other motions are filed with the regional director, except that motions made after the transfer of the record to the Board are filed with the Board. If not E-Filed, an original and two copies of written motions shall be filed. Statements of reasons in support of motions or objections should be as concise as possible. Objections shall not be deemed waived by further participation in the hearing. On appropriate request, objections may be permitted to stand to an entire line of questioning. Automatic exceptions will be allowed to all adverse rulings.

Election Details: Prior to the close of the hearing the hearing officer will: (1) solicit the parties' positions (but will not permit litigation) on the type, date(s), time(s), and location(s) of the election and the eligibility period; (2) solicit the name, address, email address, facsimile number, and phone number of the employer's on-site representative to whom the regional director should transmit the Notice of Election if an election is directed; (3) inform the parties that the regional director will issue a decision as soon as practicable and will immediately transmit the document to the parties and their designated representatives by email, facsimile, or by overnight mail (if neither an email address nor facsimile number was provided); and (4) inform the parties of their obligations if the director directs an election and of the time for complying with those obligations.

Oral Argument and Briefs: Upon request, any party is entitled to a reasonable period at the close of the hearing for oral argument, which will be included in the official transcript of the hearing. At any time before the close of the hearing, any party may file a memorandum addressing relevant issues or points of

law. *Post-hearing* briefs shall be filed only upon special permission of the regional director and within the time and addressing the subjects permitted by the regional director. If filed, copies of the memorandum or brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the memorandum or brief. No reply brief may be filed except upon special leave of the regional director. If allowed, briefs should be double-spaced on 8½ by 11 inch paper. Briefs must be filed in accordance with the provisions of Section 102.111(b) of the Board's Rules. E-Filing of briefs through the Board's website, www.nlrb.gov, is encouraged, but not required. Facsimile transmission of briefs is NOT permitted.

Regional Director Decision - After the hearing, the regional director issues a decision directing an election, dismissing the petition or reopening the hearing. A request for review of the regional director's pre-election decision may be filed with the Board at any time after issuance of the decision until 14 days after a final disposition of the proceeding by the regional director. Accordingly, a party need not file a request for review before the election in order to preserve its right to contest that decision after the election. Instead, a party can wait to see whether the election results have mooted the basis of an appeal. The Board will grant a request for review only where compelling reasons exist therefor.

Voter List – The employer must provide to the regional director and the parties named in the election agreement or direction of election a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cellular ("cell") telephone numbers) of all eligible voters. (In construction industry elections, unless the parties stipulate to the contrary, also eligible to vote are all employees in the unit who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24 months immediately preceding the election eligibility date. However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible.) The employer must also include in a separate section of the voter list the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge or those individuals who, according to the direction of election, will be permitted to vote subject to challenge.

The list of names must be alphabetized (overall or by department) and be in the same Microsoft Word file (or Microsoft Word compatible file) format as the initial lists provided with the Statement of Position form unless the parties agree to a different format or the employer certifies that it does not possess the capacity to produce the list in the required form. When feasible, the list must be filed electronically with the regional director and served electronically on the other parties named in the agreement or direction.

To be timely filed and served, the voter list must be *received* by the regional director and the parties named in the agreement or direction respectively within 2 business days after the approval of the agreement or issuance of the direction unless a longer time is specified in the agreement or direction. A certificate of service on all parties must be filed with the regional director when the voter list is filed. The employer's failure to file or serve the list within the specified time or in proper format shall be grounds for setting aside the election whenever proper and timely objections are filed. The parties shall not use the list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

Waiver of Time to Use Voter List – Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 days after the date when the employer must file the voter list with the Regional Office. However, the parties entitled to receive the voter list may waive all or part of the 10-day period by executing Form NLRB-4483. A waiver will not be effective unless all parties who are entitled to the list agree to waive the same number of days.

Election – Information about the election, requirements to post and distribute the Notice of Election, and possible proceedings after the election is available from the Regional Office and will be provided to the parties when the Notice of Election is sent to the parties.

Withdrawal or Dismissal – If it is determined that the NLRB does not have jurisdiction or that other criteria for proceeding to an election are not met, the petitioner is offered an opportunity to withdraw the petition. If the petitioner does not withdraw the petition, the regional director will dismiss the petition and advise the petitioner of the reason for the dismissal and of the right to appeal to the Board.

Attachment 3

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Date Filed
Apr 20, 2016

NATIONAL OILWELL VARCO, L.P.
and Employer
INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 95
Petitioner

Case No. 08-RC-174497

Date Issued 05/12/2016

City YOUNGSTOWN

State OH

Type of Election:
(Check one:)

(If applicable check
either or both:)

- ☒ Stipulation
☐ Board Direction
☐ Consent Agreement
☐ RD Direction
Incumbent Union (Code)

- ☐ 8(b) (7)
☐ Mail Ballot

AMENDED

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of tabulation of ballots case in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters 41

2. Number of Void ballots 0

3. Number of Votes cast for INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 95 21

4. Number of Votes cast for XXXXXXXXXXXX

5. Number of Votes cast for XXXXXXXXXXXX

6. Number of Votes cast against participating labor organization(s) 20

7. Number of Valid votes counted (sum 3, 4, 5, and 6) 41

8. Number of challenged ballots 0

9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8) 41

10. Challenges are 0 sufficient in number to affect the results of the election.

11. A majority of the valid votes counted plus challenged ballots (Item 9) has ~~not~~ been cast for
INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 95

For the Regional Director

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For NATIONAL OILWELL VARCO, L.P.

X Brandon M. Gunstetter

For INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 95

X [Signature]

For

64

16

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Attachment 4

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

NATIONAL OILWELL VARCO, L.P.

Employer

and

Case 08-RC-174497

**INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 95,**

Petitioner

EMPLOYER'S OBJECTION TO CONDUCT OF ELECTION

The National Labor Relations Board (the "Board") conducted a representation election for National Oilwell Varco, L.P. ("NOV") employees working at the Vallourec Star location in Youngstown, Ohio on May 12, 2016. On that day, the ballots were counted with a majority of ballots voting for the Petitioner, International Union of Operating Engineers, Local 95 ("Petitioner" or the "Union"). Pursuant to Section 102.69(a) of the Board's Rules and Regulations, NOV files this Objection to conduct affecting the results of the election.

OBJECTION: During the critical period, the Union threatened and coerced employees in the exercise of their free choice. Specifically, the Union threatened employees with reprisals if employees failed to vote and participate in Union activities and coerced employees to vote for the Union. Such conduct created an atmosphere of intimidation and coercion and interfered with employees' free choice.

HEARING REQUESTED: NOV requests a hearing on the genuine issues of material facts raised by this Objection, which will be supported by competent evidence that will be timely submitted to the Regional Director in accordance with the Board's Rules and Regulations.

Based on the evidence presented, NOV requests that the results of the May 12, 2016 election be set aside and that the petition be dismissed or another election conducted.

Respectfully submitted,

**OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, LLC**

By: _____/s/
Christopher E. Moore
One Shell Square
701 Poydras Street, Suite 3500
New Orleans, LA 70139
Telephone: 504-648-2604
Fax: 504-648-3859

May 19, 2016

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

**NATIONAL OILWELL VARCO, L.P.,
Employer,**

Case No. 08-RC-174497

and

**INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 95
Petitioner.**

Filed Electronically with NLRB

CERTIFICATE OF SERVICE

I certify that on May 19, 2016, a copy of the foregoing Objection to Conduct of Election, and corresponding Offer of Proof, was *Electronically Filed* on the NLRB's website <http://www.nlr.gov>.

Also, I do hereby certify that a true and correct copy of the within Objection to Conduct of Election has been served on the following individuals by email this 19th day of May 2016: Marianne Oliver at moliver@lawgol.com.

/s/
Christopher E. Moore, Esq.

Attachment 5

**UNITED STATES OF AMERICA
THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

NATIONAL OILWELL VARCO, L.P.

Employer

and

08-RC-174497

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 95

Union

ORDER DIRECTING HEARING ON OBJECTIONS AND NOTICE OF HEARING

Pursuant to a Stipulated Election Agreement approved by me on April 29, 2016, an election was conducted on May 12, 2016, among the employees in the following described unit:

All full-time and regular part-time NDT positions in the old and new mills including inspectors, technicians, notch cutters, maintenance mechanics, team leads, and operators,, but excluding all other non-professional employees, professional employees, technical employees, business and clerical employees, managerial employees, temporary employees, guards and supervisors as defined in the Act.

The tally of ballots issued after the election shows that of approximately 41 eligible voters, 41 cast ballots, of which 21 were cast for and 20 cast against the Union.

On May 19, 2016, the Employer filed timely objections (attached) to conduct affecting the results of the election.

Pursuant to the provisions of Section 102.69 of the Board's Rules and Regulations, an administrative investigation of the objections has been conducted. Concerning those objections, I make the following findings and conclusions.¹

¹ The petition was filed on April 20, 2016. I have considered only conduct which occurred during the critical period, which begins on and includes the date of the filing of the petition and extends through the election. The Ideal Electric and Manufacturing Company, 134 NLRB 1275 (1961)

THE OBJECTION:

In this objection, the Employer asserts that agents of the Union interfered with employee free choice by threatening eligible voters with unspecified reprisals.

The Offer of Proof submitted by the Employer in support of the objection indicates that it will offer testimony that an employee "quit the Company's employ without notice", allegedly because the employee was coerced by the Union into remaining employed in order to secure votes for the Union.

An additional offer of proof indicates that the Employer will offer testimony that Union agents "required employee attendance at a Union meeting" thus coercing employees in the exercise of free choice.

I have concluded that this objection raises substantial and material issues of fact and credibility which I cannot resolve on the basis of an administrative investigation. Therefore, I shall set this Objection for hearing.

ORDER

IT IS HEREBY ORDERED that the issues raised by the Employer Objection be resolved at a hearing before a duly designated hearing officer.

YOU ARE HEREBY NOTIFIED that on **June 2, 2016**, and on consecutive days thereafter until completed, at 10:00 a.m. in a Hearing Room of the National Labor Relations Board, 1695 AJC Building, 1240 East Ninth Street, Cleveland, Ohio, a hearing will be conducted before a hearing officer of the National Labor Relations Board to resolve the issues raised by the Employer Objection, at which time and place the parties will have the right to appear in person or otherwise give testimony and call, examine, and cross-examine witnesses and present oral argument pertinent to the issues raised by the Objections.

IT IS FURTHER ORDERED that the hearing officer designated for the purpose of conducting the hearing shall prepare and cause to be served upon the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Regional Director for Region 8, NLRB as to the disposition of the issues raised by the Employer Objections. Within fourteen (14) days from the date of the issuance of said report any party may file with the Regional Director an original and eight (8) copies of exceptions to such report. Immediately upon the filing of such exceptions, the parties filing the same shall serve a copy thereof upon the other party to this proceeding. If no exceptions are filed to such report, the Regional Director may, upon expiration of the period for filing exceptions, decide the matter forthwith upon the record or make other disposition of the case. See **Rules and Regulations, Section 102.69 (c) (1) (iii) and 102.69. (c) (2)**

Dated at Cleveland, Ohio this 24th day of May, 2016.

A handwritten signature in cursive script, reading "Allen Binstock", written in black ink. The signature is positioned above a horizontal line.

Allen Binstock
Regional Director
National Labor Relations Board
Region 8

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE

Case No. 08-RC-174497

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements *will not be granted* unless good and sufficient grounds are shown *and* the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds thereafter must be set forth in *detail*;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; *and*
- (5) Copies must be simultaneously served on all other parties (*listed below*), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Olgetree, Deakins, Nash, Smoak & Stewart, PC Attn: Christopher Moore, Esq. 701 Poydras Street, STE 3500 New Orleans, LA 70139-7705	Belinda Armstrong N.O.V. Tuboscope 2669 Martin Luther King Blvd. Youngstown, OH 44510-1033
Olgetree, Deakins, Nash, Smoak & Stewart, PC Attn: Sarah M. Rain, Esq. 111 Monument Circle, STE 5600 Indianapolis, IN 46204	Belinda Armstrong 2835 Holmes Road. Houston, TX 77051-1099

Marianne Oliver, Esq. Gilardi, Oliver & Lomupo, P.A. 223 Fourth Avenue, 10th Floor The Benedum Trees Building Pittsburgh, PA 15222-1717	David Conklin, Business Agent International Union of Operating Engineers, Local 95 300 Saline St Pittsburgh, PA 15207-1032

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

NATIONAL OILWELL VARCO, L.P.

Employer

and

Case 08-RC-174497

**INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 95,**

Petitioner

EMPLOYER'S OBJECTION TO CONDUCT OF ELECTION

The National Labor Relations Board (the "Board") conducted a representation election for National Oilwell Varco, L.P. ("NOV") employees working at the Vallourec Star location in Youngstown, Ohio on May 12, 2016. On that day, the ballots were counted with a majority of ballots voting for the Petitioner, International Union of Operating Engineers, Local 95 ("Petitioner" or the "Union"). Pursuant to Section 102.69(a) of the Board's Rules and Regulations, NOV files this Objection to conduct affecting the results of the election.

OBJECTION: During the critical period, the Union threatened and coerced employees in the exercise of their free choice. Specifically, the Union threatened employees with reprisals if employees failed to vote and participate in Union activities and coerced employees to vote for the Union. Such conduct created an atmosphere of intimidation and coercion and interfered with employees' free choice.

HEARING REQUESTED: NOV requests a hearing on the genuine issues of material facts raised by this Objection, which will be supported by competent evidence that will be timely submitted to the Regional Director in accordance with the Board's Rules and Regulations.

Based on the evidence presented, NOV requests that the results of the May 12, 2016 election be set aside and that the petition be dismissed or another election conducted.

Respectfully submitted,

**OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, LLC**

By: _____/s/
Christopher E. Moore
One Shell Square
701 Poydras Street, Suite 3500
New Orleans, LA 70139
Telephone: 504-648-2604
Fax: 504-648-3859

May 19, 2016

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

**NATIONAL OILWELL VARCO, L.P.,
Employer,**

Case No. 08-RC-174497

and

**INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 95
Petitioner.**

Filed Electronically with NLRB

CERTIFICATE OF SERVICE

I certify that on May 19, 2016, a copy of the foregoing Objection to Conduct of Election, and corresponding Offer of Proof, was *Electronically Filed* on the NLRB's website <http://www.nlr.gov>.

Also, I do hereby certify that a true and correct copy of the within Objection to Conduct of Election has been served on the following individuals by email this 19th day of May 2016: Marianne Oliver at moliver@lawgol.com.

/s/
Christopher E. Moore, Esq.

Attachment 6

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

NATIONAL OILWELL VARCO, L.P.

Employer

and

Case 08-RC-174497

**INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 95,**

Petitioner

HEARING OFFICER'S REPORT ON OBJECTIONS

This report contains my findings and recommendations regarding the Employer's Objection concerning conduct affecting the results of the election in the above matter. Based upon the record in the case, my observation of the witnesses, examination of all exhibits, resolution of the credibility of the witnesses, and findings of fact,¹ I conclude that the Objection should be overruled in its entirety because the Employer has not met its burden of establishing that the Union engaged in objectionable conduct affecting the results of the election.

I. PROCEDURAL HISTORY

Based on a petition filed on April 20, 2016,² and a Stipulated Election Agreement approved by the Regional Director, an election was conducted on May 12, to determine whether a unit of employees of the Employer wished to be represented for purposes of collective bargaining by the Petitioner.³

The Tally of Ballots that issued after the election showed the following:

¹ The parties were permitted to file briefs, and the briefs filed by the Employer and the Petitioner were fully considered.

² All dates are in 2016, unless otherwise noted.

³ The bargaining unit consists of:

All full -time and regular part -time NDT positions in the old and new mills including inspectors, technicians, notch cutters, maintenance, mechanics, team leads, and operators but excluding all other non -professional employees, professional employees, technical employees, business and clerical employees, managerial employees, temporary employees, guards and supervisors as defined in the Act.

Approximate number of eligible voters	41
Number of void ballots	0
Number of votes cast for Petitioner	21
Number of votes cast against participating labor organization(s)...	20
Number of valid votes counted	41
Number of challenged ballots	0
Number of valid votes counted plus challenged ballots	41

On May 29, the Employer filed a timely Objection to Conduct Affecting the Results of the Election, a copy of which was served on the Petitioner. The Employer's Objection is as follows:

During the critical period, the Union threatened and coerced employees in the exercise of their free choice. Specifically, the Union threatened employees with reprisals if employees failed to vote and participate in Union activities and coerced employees to vote for the Union. Such conduct created an atmosphere of intimidation and coercion and interfered with employees' free choice.

Pursuant to Section 102.69 of the Board's Rules and Regulations, the Regional Director issued an Order Directing Hearing and Notice of Hearing on Objection (Order) which directed that a hearing be held for purposes of receiving evidence to resolve the issues raised by the Employer's Objection. On June 2, a hearing was held before me for the sole purpose of resolving the issues raised by the Employer's Objection.

II. THE EMPLOYER'S OBJECTION

The Employer asserts that during the critical period prior to the election, the Petitioner threatened employees with reprisals if they failed to participate in union activities and coerced employees to vote for the Petitioner. The Employer claims that such conduct created an atmosphere of intimidation and coercion and interfered with employees' free choice, and that the representation election should be set aside.

III. BOARD'S LEGAL STANDARDS FOR SETTING ASIDE ELECTIONS

A. Burden of Proof

It is well settled that "[r]epresentation elections are not lightly set aside," and that "[t]here is a strong presumption that ballots cast under specific NLRB procedural safeguards reflect the true desires of the employees." *Lockheed Martin Skunk Works*, 331 NLRB 852, 854 (2000) (quoting *NLRB v. Hood Furniture Co.*, 941 F.2d 325, 328 (5th Cir. 1991) (internal citation omitted)). Therefore, "the burden of proof on parties seeking to have a Board-supervised election set aside is a heavy one." *Delta Brands, Inc.*, 344 NLRB 252, 253 (2005) (citing *Kux Mfg. Co. v. NLRB*, 890 F.2d 804, 808 (6th Cir. 1989)). To prevail, the objecting party must establish facts raising a "reasonable doubt as to the fairness and validity of the election." *Patient Care of Pennsylvania*, 360 NLRB No. 76 (2014) (citing *Polymers, Inc.*, 174 NLRB 282, 282 (1969), *enfd.* 414 F.2d 999 (2d Cir. 1969)). Moreover, to meet its burden the objecting party must show that the conduct in question affected employees in the voting unit. *Avante at Boca*

Raton, 323 NLRB 555, 560 (1997) (overruling employer's objection where no evidence that unit employees knew of the alleged coercive incident).

B. Legal Standard for Alleged Party Misconduct

In this proceeding, the Employer has the burden of proof with respect to: (1) showing that certain specific conduct by union agents, or in some cases, other persons, had an undue and adverse impact on the election, and (2) that the conduct occurred within the time period from the date that the petition was filed until the date that the election was held. *Foxwoods Resort Casino*, 352 NLRB 771, 773 (2008) (citing *Ideal Electric & Mfg. Co.*, 134 NLRB 1275 (1961)). In determining whether to set aside an election, the Board applies an objective test. Thus, the Board does not consider whether a party's conduct in fact coerced employees, but whether the party's misconduct reasonably tended to "induce employees to vote not based 'upon conviction, but upon fear or upon any other improperly induced consideration.'" *Pearson Education, Inc.*, 336 NLRB 979, 983 (2001) (quoting *Zieglers Refuse Collectors, Inc. v. NLRB*, 639 F.2d 1000, 1005 (3rd Cir. 1981)).

In determining whether a party's conduct has the tendency to interfere with employee free choice, the Board considers a number of factors: (1) the number of incidents; (2) the severity of the incidents and whether they were likely to cause fear among employees in the voting unit; (3) the number of employees in the voting unit who were subjected to the misconduct; (4) the proximity of the misconduct to the date of the election; (5) the degree to which the misconduct persists in the minds of employees in the voting unit; (6) the extent of dissemination of the misconduct to employees who were not subjected to the misconduct but who are in the voting unit; (7) the effect (if any) of any misconduct by the non-objecting party to cancel out the effects of the misconduct alleged in the objection; (8) the closeness of the vote; and (9) the degree to which the misconduct can be attributed to the party against whom objections are filed. *Taylor Wharton Division*, 336 NLRB 157, 158 (2001) (citing *Avis Rent-a-Car*, 280 NLRB 580, 581 (1986)).

IV. RECORD EVIDENCE

The Order directing hearing in this matter instructs me to resolve the credibility of witnesses testifying at the hearing and to make findings of fact. Unless otherwise specified, my summary of the record evidence is a composite of the testimony of all witnesses, including in particular testimony by witnesses that is consistent with one another, with documentary evidence, or with undisputed evidence, as well as testimony that is uncontested. Omitted testimony or evidence is either irrelevant or cumulative. Most of the findings of fact herein do not involve the resolution of directly conflicting testimony. However, where it is necessary to resolve directly conflicting testimony on substantive issues, my credibility resolutions will be set forth below.

During the hearing, the Employer presented testimony from the following witnesses: Operations Manager James Clark, Human Resources Manager Pedro Laurin, employee Luigi Lombardi and organizer Mike Cagney. The Petitioner called organizer David Conklin.

The record evidence showed that Mike Cagney is an organizer with the Petitioner and worked on the campaign to organize the Employer's employees. Cagney became involved in this campaign after first being contacted by employee Kenneth Priester.

During the critical period prior to the election (April 20 through May 12), Cagney created a private group on Facebook to communicate with employees through Facebook Messenger. Cagney first invited Priester, who in turn invited other employees who were on Facebook. About 27 of the Employer's 41 employees accepted invitations to the Facebook group.

In the days prior to an organizing meeting on May 7, Cagney and organizer David Conklin posted messages to the Facebook group website urging them to attend the meeting. On May 2, Cagney wrote:

Pretty simple from here guys, if we don't get ppl to show at this meeting in person we may have to walk away. There's been hours of work by your coworkers trying to get this opportunity for you guys.

We cannot guarantee (sic) you anything other than the full backing and assistance (sic) for YOU to collectively bargain a contract with Tuboscope. This is your UNION and is only as strong as you guys can be against these anti union tactics your employer is placing on you. This is the only way you guys have (sic) to get out of the EAR policy that's in place. This is the only way you all can have a plan in place to meet the rates the other guys in the mill make. Chatting on here isn't going to move us forward we need everyone to show up and show support.

On May 4, Conklin wrote:

guys as of right now we have 11 ppl committed to the meeting Saturday via the face book group. that's not going to fly. you need to start talking to the other guys and getting them to come or we may have to step back. I know you guys are dealing with a lot of bullshit from the company but they are only doing this to appease you and let us stop talking. that's exactly what they want. they want to. I spoke with a level 3 tech from Local 112 and he said that anything involving ASNT Standards is very serious. I am going to have a contract that WOE Local 66 has at the plant with the scrap guys on cranes etc. They have had a contract for 9 years and are making around \$20 an hour. I can show you that language and use that to outline what we will work on IF WE GET NUMBERS OUT THIS SATURDAY!!!!!!! Don't let these tactics scare you. Ask them how much they pay for anti union literature

Finally, on May 5, Conklin wrote the following message:

I'm going to add to Mike's comments. Guys I know everyone probably has plans or has things they would rather do. But I'm telling you this is important. Unless you are in the hospital or working you need to be at the meeting. This meeting on Saturday is the most important thing you have going this weekend. And don't you

think for a moment that NOV doesn't know about this meeting. I guarantee they will make a drive-by to see about how many are there. Guys it's swim or sink time. We need people to confirm attendance for the meeting. Let us have this opportunity to answer questions and or concerns. I understand that not everyone is on this page but please put the word out to attend. Thanks

The Employer called employee Luigi Lombardi in an effort to establish the effect of the Facebook messages on the employees. Lombardi testified that the posts urging employees to attend the organizing meeting made him feel "a little disgruntled" because someone that he did not know was "telling me my priorities" and telling "me what to do." Lombardi also was bothered by the messages because he did not want the Union to assume that his attendance at the meeting meant he supported the organizing campaign. Lombardi did attend the May 7 organizing meeting, where he expressed his non-support of the Union. Lombardi also testified that he was not aware of any problems or consequences for any employee who did not attend the meeting.

In the same Facebook group chat, three employees each disclosed that they made an audio recording of a meeting with management concerning the upcoming election. No evidence was introduced that the Union knew of or directed the recording of the management meeting. In a later message, one employee requested email addresses from those who wanted the audio file and Union organizer Conklin posted his email in response. Conklin admitted that after learning that employees had recorded meetings with management, he did not do anything to discourage the practice.

Employee Kenneth Priester testified that when he learned that he would be subpoenaed for the underlying proceeding, he created written surveys to find out whether employees were pressured by either the Petitioner or the Employer prior to the election. The Petitioner did not request that Priester undertake the surveys nor did Priester consult with anyone prior to drafting the surveys.

Priester testified that on June 1, he presented the surveys to 17 co-workers prior to and during his shift. Priester told his co-workers that he had been subpoenaed to a hearing and he was seeking information that would help him figure out what may have happened during the union campaign. Priester did not identify himself as a representative of the Union when surveying his co-workers. While 14 employees signed the surveys, three declined to do so. Priester did not circulate the surveys to the employees on the other shift.

Finally, testimony was elicited that on the date of the election after the election was held, an employee resigned from his position after casting his ballot.

V. PARTIES' POSITIONS

The Employer asserts the each of the factors in *Taylor Wharton Division* weighs strongly in favor of finding that the Petitioner's conduct affected the election. The Employer asserts that the Petitioner's campaign "consisted of threatening and coercing employees to attend meetings, creating a fear of reprisals and depriving employees of their free choice." Specifically, the

Employer points to the Petitioner's Facebook messages sent to employees in the petitioned-for unit during the time period leading up to the election. Such messages demanded that employees attend the organizing meetings unless they were "in the hospital or working," predicted that the Employer would engage in unlawful surveillance and threatened to abandon its representation efforts.

The Employer also attributes objectionable conduct by the Union for failing to discourage employees from recording management meetings. Moreover, the Employer maintains that the failure of three employees to sign post-election surveys is evidence that employees were threatened and intimidated by the Petitioner during the election period. Finally, the Employer argues that the employee quit under suspicious circumstances, making the effect of the Union's threats and intimidation that much more impactful.

The Petitioner contends that the Employer fails to satisfy the substantial burden to justify setting aside the election. The Petitioner submits that taken in context, the Facebook messages were objectively not threats, but rather pleas for unity and support to employees to get behind the organizing campaign. The Petitioner also maintains that the Employer has failed to adduce any admissible evidence regarding the other allegations of misconduct.

VI. ANALYSIS & LAW

The question before me is whether the Employer has met its burden of proof that certain actions taken by the Petitioner during the relevant period had an undue and adverse impact on the election.

In considering the import of the Facebook messages, I need not credit the testimony of one witness over another. The sending and content of the messages are not in dispute. Further, because an objective test is utilized, I am not considering whether employee Lombardi or any other person⁴ felt that the Facebook messages were coercive or threatening.

I conclude that Cagney and Conklin did not engage in impermissible conduct when they sent the above-referenced Facebook messages to employees. The Petitioner's communicating with employees through Facebook Messenger is standard electioneering in today's online world, and is arguably less intimidating than face-to-face interactions. The three messages at-issue constitute a series of exhortations for employees to attend a pre-election organizing meeting, and no threats were made to employees who chose not to attend.

The only possible consequence expressed if not enough employees attended the organizing meeting was that the Petitioner might need to "step back" and withdraw the election petition. This statement is objectively not an unlawful threat. In this context, employees knew that the organizing effort could be unsuccessful, and the Petitioner simply made a permissible statement about the possible ramifications of low attendance at the meeting. See *Chicago Truck Drivers Local 101 (Bake-Line Products)*, 329 NLRB 247 (1999) (union informing employees if

⁴ During the hearing, Employer's counsel elicited testimony from Lombardi, management officials and Petitioner's representatives about the possible effect of these messages on themselves or others.

would consider disclaiming recognition if it lost deauthorization election was lawful and did not warrant setting aside election).

With regard to the post-election surveys circulated by Kenneth Priester, the fact that three employees did not sign the petition is not probative of any misconduct by the Petitioner during the election period. It is sheer conjecture that these three employees did not sign the petition because the Petitioner threatened or coerced employees during the election period.

I also do not find the fact that the Union's failure to object to the employees' recording of management meetings would have had a chilling effect on the reasonable employee. Audio recording by employees in the workplace are protected by Section 7. *Whole Foods Market*, 363 NLRB No. 87 at 3 (2015). As such, the Petitioner cannot be faulted or criticized for trying to stop a legal practice.⁵

Further, there is no evidence that the recording of the meeting with management had any effect on stifling opposition to the union, or intimidating anyone from attending or speaking at the May 7 organizing meeting. In fact, Employer's own witness Lombardi testified that he went to the May 7 meeting and freely expressed that he was not in favor of the Union.

Moreover, with regard to the employee resigning on the day of the election, the Employer did not put forth any admissible evidence why the employee resigned or that the Petitioner pressured or influenced the employee to delay his resignation until after the election. As such, the employee's resignation has no probative value to this matter.

Even if I found that the Facebook messages and other conduct constituted threats, which I do not, in considering the nine-point test described in *Taylor Wharton Division*, I further conclude they did not sufficiently interfere with employees' freedom of choice. While a few prongs of the test favor the Employer's position (i.e., dissemination, the closeness of the final vote, and the degree to which the objectionable conduct is attributable to the Union), I would still conclude that the Employer failed to show that the Union created an atmosphere of fear and reprisal rendering a free election impossible.

VII. CONCLUSION & RECOMMENDATION

I recommend that the Employer's objection be overruled in its entirety. The Employer has failed to establish that the Petitioner or any of its agents engaged in objectionable conduct affecting the results of the election. Because there is insufficient evidence to set aside the election held on May 12, I recommend that an appropriate certification issue.

VIII. APPEAL PROCEDURE

⁵ In support of its claim, the Employer cites to *Mike Yurosek & Son*, 292 NLRB 1074 (1989), where a union's photographing of its employees was sufficient to warrant a new election. Here, there is no evidence that the Petitioner engaged in any similar conduct. The effect of a union's photographing or recording of employees cannot be equated with failing to discourage employees from recording meetings with management.

Pursuant to Section 102.69(c)(1)(iii) of the Board's Rules and Regulations, any party may file exceptions to this Report, with a supporting brief if desired, with the Regional Director of Region 8 by Monday, July 8, 2016. A copy of such exceptions, together with a copy of any brief filed, shall immediately be served on the other parties and a statement of service filed with the Regional Director.

Exceptions may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the exceptions should be addressed to the Regional Director, National Labor Relations Board – Region 8, Anthony J. Celebrezze Federal Building, 1240 E. Ninth Street, Room 1695, Cleveland, OH 44199-2086.

Pursuant to Sections 102.111 through 102.114 of the Board's Rules, exceptions and any supporting brief must be received by the Regional Director by close of business at 4:45 p.m. Eastern Time on the due date. If E-Filed, it will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than 11:59 p.m. Eastern Time on the due date.

Within 7 days from the last date on which exceptions and any supporting brief may be filed, or such further time as the Regional Director may allow, a party opposing the exceptions may file an answering brief with the Regional Director. An original and one copy shall be submitted. A copy of such answering brief shall immediately be served on the other parties and a statement of service filed with the Regional Director.

Dated at Cleveland, Ohio, this 24th day of June 2016.

/s/ Stephen Pincus
Stephen M. Pincus, Hearing Officer
National Labor Relations Board – Region 8
Anthony J. Celebrezze Federal Building
1240 E. Ninth Street, Room 1695
Cleveland, OH 44199-2086
E-mail: stephen.pincus@nlrb.gov

Attachment 7

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

NATIONAL OILWELL VARCO, L.P.

Employer

and

Case 08-RC-174497

**INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 95,**

Petitioner

**EMPLOYER'S EXCEPTIONS TO
HEARING OFFICER'S REPORT ON OBJECTIONS**

Pursuant to Section 102.69(c)(1)(iii) of the National Labor Relations Board's ("the Board") Rules and Regulations, the Employer, National Oilwell Varco, L.P., files these Exceptions to the Hearing Officer's Report on Objections ("Hearing Officer's Report") issued on June 24, 2016.

EXCEPTIONS

1. The Employer excepts to the Hearing Officer's Report, conclusion, and finding that the Petitioner's threatening and coercive messages did not interfere with the employees' right to choose freely their representatives in a Board-conducted election where the Petitioner threatened to abandon employees and take other unspecified reprisals if employees did not participate in meetings and support Petitioner.
2. The Employer excepts to the Hearing Officer's Report, conclusion, and finding that the Petitioner's acquiescence in the recording and, more importantly, the publicizing of the recording of employee meetings had a chilling and coercive effect on the employees' right to choose freely their representatives in a Board-conducted election.

ARGUMENT

The Hearing Officer failed to find the Petitioner, International Union of Operating Engineers, Local 95, engaged in impermissible conduct by threatening and coercing employees,

conduct which affected the outcome of the election – an election that was decided by a one-vote margin. The Hearing Officer erroneously determined the Petitioner’s conduct did not affect the election, regardless of the narrow victory, and improperly failed to set aside the election results. For the reasons set forth in these Exceptions, the Employer requests these Exceptions be sustained and that the Hearing Officer’s Report be overturned with respect to the findings concerning Employer’s Objection 1.

- 1. The Employer excepts to the Hearing Officer’s Report, conclusion, and finding that the Petitioner’s threatening and coercive actions did not interfere with the employees’ right to choose freely their representatives in a Board-conducted election where the Petitioner threatened to abandon employees and take other unspecified reprisals if employees did not participate in meetings and support Petitioner.**

In support of his finding that the Petitioner did not engage in conduct having an effect on employees’ free choice, the Hearing Officer relied on the Board’s decision in *Chicago Truck Drivers Local 101 (Bake-Line Products)*, 329 NLRB 247 (1999), a case where the Board reviewed whether the union improperly threatened to disclaim interest in the bargaining if a substantial number of its members voted to deauthorize the union security clause. In so doing, the Board found a union can lawfully threaten to disclaim interest because “when a union says it may disclaim representation if it loses a deauthorization petition, this is a statement based on the objective reality of representation.” *Id.* at 249. However, the rationale set forth by the Board in *Chicago Truck Drivers* is not analogous to the instant case.

In *Chicago Truck Drivers*, the Board specifically noted that the union did not threaten to retaliate against employees because of the way they voted in the election, the exercise of their Section 7 rights. In the instant matter, the Petitioner threatened employees that if they did not participate in union activities in the manner the Petitioner demanded, stifling their Section 7 rights, it would retaliate against employees. While the Hearing Officer found the Petitioner’s

actions proper because “employees knew that the organizing effort could be unsuccessful,” this was not the threat the Petitioner made. (Hearing Officer’s Report at 6). The Petitioner did not merely say something to the effect of “if we do not have enough support at the election, we could lose the election and you will have no representation.” Rather, the Petitioner instructed employees that unless they were at work or in the hospital they must attend a union meeting or face unidentified reprisals. Section 7 of the National Labor Relations Act (“the Act”) protects not only employees’ right to organize and support a union but also their right to refrain from doing so. By making its threats, the Petitioner was demanding employees exercise their Section 7 rights in a particular manner or pay the price.

The Hearing Officer correctly determined the Employer met its burden of establishing “a few prongs of the [nine-point] test [described in *Taylor Wharton Division*, 336 NLRB 157 (2001)] favor the Employer’s position (i.e., dissemination, the closeness of the final vote, and the degree to which the objectionable conduct is attributable to the Union).” (Hearing Officer’s Report at 7). The Hearing Officer nonetheless determined the threats made by the Petitioner were insufficient to affect the outcome of the election because “employees knew that the organizing effort could be unsuccessful” and therefore, the Petitioner was free to coerce employees in exercising their right to refrain from participating in union activities. The Hearing Officer failed to appreciate the coercive effect of Petitioner’s actions and despite the Employer meeting the *Taylor Wharton* standards, erroneously found the Petitioner did not interfere with employees’ Section 7 rights even where the Petitioner threatened employees with reprisals if they did not exercise their rights in the manner Petitioner demanded.

Moreover, while the Hearing Officer emphasized that the proper standard for determining the coercive nature of Petitioner’s actions is an objective one, in finding the Petitioner’s conduct

was not coercive, he disregarded the testimony of the Petitioner's own organizer Mike Cagney ("Cagney") who admitted he could see how employees could interpret his words as a threat:

Q. Get there to the meeting with numbers or we're taking a step back. That means we're going to leave you right here. We're going to leave you at the alter [sic]. We're going to walk you down this path, and then we're going to leave you at the alter [sic], right?

A. I don't believe that's what I was saying, no.

Q. Can you see how someone would interpret it that way, though?

A. Not really.

Q. That's not a reasonable way to look at the language that you wrote?

A. I can see how you could get that from typed words, yes.

* * *

Q. Get numbers or else; that's what that says, isn't it?

A. No.

Q. Could it be interpreted that way reasonably?

A. It could be interpreted that way. I guess.

(Tr. 175-76; Em. Ex. 1).

As a seasoned union organizer, if Cagney realized the coercive and threatening nature of his statements, surely employees without experience with unions would find the statements even more coercive and threatening. Rather than just encouraging employees to participate in meetings and exercise their Section 7 rights, the Union went one step further and threatened employees if they failed to exercise their rights in the way the Union demanded. Had the Union merely asked employees to participate, stressed the importance of attending, or even induced attendance with baked goods, such actions would have been permissible. Apparently believing

employees would not to voluntarily participate, the Union instead resorted to threats and coercion.

Cagney then tried to downplay his threats because, as he viewed them, they were to a group of employees rather than just one individual employee:

Q. So do you think it's acceptable to tell someone in the midst of that decision, whether they're undecided, decided, whatever; Get to the meeting or we're out of here?

A. I didn't say that to someone directly, I said that to the group of workers who had been communicating with me on questions.

(Tr. 178). However, by acknowledging the wide dissemination of the threats, Cagney admits the third *Taylor Wharton* factor, the number of employees in the voting unit who were subjected to the misconduct, weighs in favor of the Employer. The Union not only threatened employees, it did so on a large scale, sending the messages to a majority of the voting unit – a voting unit which voted for the Union by the slimmest of margins. If even one employee felt coerced or threatened by the Union and voted yes as a result thereof, this lone individual served as the deciding vote and tipped the scale in the Union's favor, rewarding the impermissible conduct.

Cagney did not testify he could see how a particular employee could feel that way or otherwise couch his statement as one skewed subjectively to particular individuals. Instead, he acknowledged employees, in general, could objectively interpret his own messages as threatening. Cagney did not couch his answer to indicate that only employee Luigi Lombardi ("Lombardi") who testified on the Employer's behalf could feel threatened by this comments, which Lombardi testified he was. Instead, Cagney testified he could see how **employees**, without any qualifiers, could be threatened – thereby confirming the Employer's position that a reasonable, objective employee could feel threatened and coerced by Cagney's statements. Notwithstanding the admission to the contrary, the Hearing Officer determined an objective

person would not find Petitioner's statements to be threatening. Moreover, he admitted he sent these threats to a large number of employees, not to a limited number of individuals.

2. The Employer excepts to the Hearing Officer's Report, conclusion, and finding that the Petitioner's acquiescence in the recording and, more importantly, the publicizing of the recording of employee meetings had a chilling and coercive effect on the employees' right to choose freely their representatives in a Board-conducted election.

The Hearing Officer relied on the Board's recent decision in *Whole Foods Market*, 363 NLRB No. 87 (2015) in support of his position that the Petitioner's acquiescence to union supporters' recording of meetings was lawful because "audio recording by employees in the workplace are protected by Section 7." (Hearing Officer's Report at 7). The Hearing Officer then reasoned the Petitioner "cannot be faulted or criticized for trying to stop a legal practice." (*Id.*). However, in *Whole Foods*, the Board examined whether a total prohibition against recording in the workplace was lawful under the Act. In finding the specific policy at issue unlawful, the Board noted that "photography and audio and video recording at the workplace are protected **under certain circumstances**." 363 NLRB No. 87 at *3. The Hearing Officer nonetheless failed to recognize there are instances in which an employer can restrict audio recording in the workplace. Moreover, the issue in *Whole Foods* was whether the blanket prohibition against recording in the employer's policy chilled employees' Section 7 rights. *Whole Foods* did not address whether a union's (or employee's) recording of Section 7 activities coerces or improperly affected the results of the instant election.

Moreover, in attempting to apply the Board's rationale in *Whole Foods* to the instant matter, the Hearing Officer ignored that here the union supporters did more than just merely record employees meetings. Rather, the employees recorded then sought to publicize the recordings, chilling employees' in their ability to ask questions or voice opinions about

unionization, a right protected by Section 7 of the Act and thereby making the recordings more akin to the photography examined and held unlawful in *Mike Yurosek & Son*, 292 NLRB 1074 (1989). The Hearing Officer's reliance on *Whole Foods* is misplaced and should not be adopted by the Regional Director.

CONCLUSION

Based on the entire record of proceedings in this case, including the testimony at the hearing on June 2, 2016, the Employer's Post-Hearing Brief, these exceptions to the Hearing Officer's Report on Objections, the authorities cited herein, the Employer respectfully requests that the Regional Director reject the Report and Recommendations and find the Petitioner engaged in objectionable conduct and set aside the election.

Respectfully submitted,

**OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, LLC**

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Dated: July 8, 2016

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

NATIONAL OILWELL VARCO, L.P.

Employer

and

Case 08-RC-174497

**INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 95,**

Petitioner

CERTIFICATE OF SERVICE

I certify that on July 8, 2016, a copy of the foregoing Post-Hearing Brief on Objection to Conduct of Election was *Electronically Filed* on the NLRB's website <http://www.nlr.gov>.

Also, I do hereby certify that a true and correct copy of the within Objection to Conduct of Election has been served on the following individuals by email this 8th day of July 2016: Marianne Oliver at moliver@lawgol.com and Robert Eberle at bob@eblaborlaw.com.

/s/ Christopher E. Moore

Christopher E. Moore, Esq.

25325425.1

Attachment 8

LU95-NDT

Engrl Ex 1



I'm going to add to Mike's comments. .Guys I know everyone probably has plans or has things they would rather do. But I'm telling you this is important. Unless you are in the hospital or working you need to be at the meeting. This meeting on Saturday is the most important thing you have going this weekend. And don't you think for a moment that NOV doesn't know about this meeting. I guarantee they will make a drive-by to see about how many are there. Guys it's swim or sink time. We need people to confirm attendance for the meeting. Let us have this opportunity to answer questions and or concerns. I understand that not everyone is on this page but please put the word out to attend. Thanks

Employer

Good morning. I hope to see you all Saturday morning. I am driving 2 hours for the meeting as well as David. This is an important day moving forward with you guys. I understand the company has been implementing their anti union campaign, I'm curious as to if anyone has asked about who they are receiving their information from?? Just curious, knowing thats your legal right. Anyways, we have the list of employees at 42 voters for the election. We need to have at least 25 solid supporters wether its a Private message on here, a phone call, or a minute or two saturday at the meeting. We are here to assist YOU GUYS. WE CANT DO THAT IF NO ONE SHOWS UP OR VOTES US TO REPRESENT. I have negotiations today which will take most of my time. PLEASE CONTACT ME ABOUT COMMING TO MEETING OTHER THEN IN THIS GROUP CHAT!! its all confidential and no one from the company will see this list or know who is a supporter. Thank you



guys as of right now we have 11 ppl committed to the meeting saturday via the face book group. thats not going to fly. you need to start talking to the other guys and getting them to come or we may have to step back. I know you guys are dealing with a lot of bullshit from the company but they are only doing this to appease you and let us stop talking. thats exactly what they want. they want to. I spoke with a level 3 tech from Local 112 and he said that anything involving ASNT Standards is very serious. I am going to have a contract that IUOE Local 66 has at the plant with the scrap guys on cranes etc. They have had a contract for 9 years and are making around \$20 an hour. I can show you that language and use that to outline what we will work on IF WE GET NUMBERS OUT THIS SATURDAY!!!!!!! Don't let these tactics scare you. Ask they how much they pay for this anti union literature



Pretty simple from here guys, if we don't get ppl to show at this meeting in person we may have to walk away. There's been hours of work by your coworkers trying to get this opportunity for you guys.

We cannot gauruntee you anything other then the full backing and assittance for YOU to collectively bargain a contract with Tuboscope. This is your UNION and is only as strong as you guys can be against these anti union tactics your employer is placing on you. This is the only way you guys hVe to get out of the EDR policy that's in place. This is the only way you all can have a plan in place to meet the rates the other guys in the mill make. Chatting on here isn't going to move us forward we need everyone to show up and show support 5/7/16.



During the course of the union campaign. (1) Were you forced to cast a (yes) vote, (2) Were you asked to extend your employment until after the voting process. (3) were you offered any special treatment, or felt bribed for a yes vote. If you felt any of the above, place the numbers in the (yes) column indicating which or, all three numbers. If none of the above pertain to you simply check (no)

_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____

During the course of the anti-union campaign. (1) Did you feel forced to cast a (no) vote, (2) Were you asked to extend your employment until after the voting process. (3) Were you offered any special treatment, or felt bribed for a (no) vote. If you felt any of the above, place the numbers in the (yes) column indicating which or, all three numbers. If none of the above pertain to you simply check (no)

_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____

During the course of the union campaign. Were you forced to attend any union meetings, and faced repercussions for not attending these meetings. Please sign below and check the appropriate answer. Yes indicating you were forced and face repercussions, or No you felt no threat and were not forced.

_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____

During the course of Anti union campaigns. Did you feel forced to attend any meetings, and given an opportunity to not attend these meetings. Please sign below and check the appropriate answer. (Yes) indicating you felt forced and felt you had to attend, or (No) indicating you felt no threat and did not feel it forced on you.

_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____

ER-5

During the course of the campaign and after the vote. (1) Did any union representatives from the hall make you feel threaten over you choice.(2) Did any NOV Tuboscope representatives make you feel threaten over your choice. Please check the appropriate box. If a (yes) to any of the following. Please indicate by it's assigned number.

_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____
_____	Yes ____	No ____

ER-6

ER Ex 7

Oh, hey, added bonus; I recorded the meeting. I'll listen to it for sound quality, and if it's even possible to hear anything/everything, I'll try to share it here.

Me 2

Giggity

So did I

Awesome, so we've got atleast 3 recordings of her blatantly giving false information as is.



[REDACTED]

What are the emails I can try
and send this recording. It
kinda clear but it low sound
so you'll have to turn the
volume way up



[REDACTED]

dconklin@luoelocal95.org



10



~~File to big to send in a email.~~

I'll see why t can do



Might have to put it on to a
computer and send it



Attachment 9

HEARING TRANSCRIPT EXCERPTS

1 HEARING OFFICER PINCUS: For now I'm going to
2 allow, just as -- for the relevance, to see if
3 it's relevant. I'm not admitting it as the
4 truth of the matter, but I'll go for -- and if
5 you could tie it up later on.

6 But go ahead and --

7 A. Ross quit for financial reasons;
8 his -- his paycheck is what he told me.

9 Q. All right. Did -- did he resign
10 formally by writing you a letter or anything
11 like that?

12 A. No.

13 Q. What were the circumstances?

14 A. On May 12th, Ross quit. He walked
15 into my break room and quit. It was around
16 4:00 or 5:00 o'clock p.m., I want to say. I
17 don't know exact time, but it was around there.
18 It was evening hours.

19 Q. And what were the circumstances of
20 his departure?

21 A. He was fed up with what was going
22 on -- I don't know, I think he had enough. He
23 was -- he didn't really give me any kind of
24 explanation. He walked into my break room, and
25 Ross is kind of a -- if you know Ross, Ross is

1 kind of a hothead. He had some choice words
2 for me and choice words for another supervisor
3 that was standing there. And he turned and he
4 said, I'm going to quit. And I didn't know if
5 he actually quit right then and there or he was
6 still employed. And then he walked out the
7 door. He's done this to me twice in the past,
8 threatened to quit, but hasn't quit.

9 Q. Did he say anything to you about
10 why he was quitting?

11 A. No, he did not.

12 Q. Did he say anything about the
13 company when he quit?

14 A. He referred to the company as a
15 "cheap ass company."

16 Q. Did -- did he say anything about
17 the Union when he quit?

18 A. It was -- if I remember correctly,
19 it was; This company is a cheap ass company,
20 and that's why the Union is here.

21 Q. Do you know if Mr. Lyle had been in
22 contact with the Union?

23 A. I do not know.

24 Q. Did you talk to Mr. -- you
25 mentioned you talked to him yesterday?

1 in the hospital or working, you need to be at
2 the meeting. Do you see that on page 1?

3 A. Yes.

4 Q. Were you -- did anyone in the
5 workforce express concern to you about what
6 that meant?

7 MR. EBERLE: Again, I'm going to
8 object --

9 MR. MOORE: I'm not asking for what
10 they said.

11 HEARING OFFICER PINCUS: Could you just read
12 back his question, please?

13 (Record read.)

14 HEARING OFFICER PINCUS: Okay. You can ask
15 whether they expressed concern. The words
16 themselves are not going to be admissible.

17 MR. MOORE: That's understood.

18 A. Yes.

19 Q. How many different employees?

20 A. Four.

21 Q. Did it appear to you that they were
22 bothered by what the meaning of this particular
23 communication was?

24 MR. EBERLE: Again, I think that --
25 I hate to belabor the record with objections,

1 else that they might have been disturbed by the
2 contents of these messages?

3 A. Some of the guys, yeah, that are
4 actually in -- and one guy doesn't have
5 Facebook; I let him read some of them through
6 my phone.

7 Q. And what was the reaction that you
8 observed to reading these?

9 A. They were upset, too, as well.

10 Q. So let's look at page 3. And this,
11 again, is something you identified as coming
12 through Facebook Messenger from Mike Cagney; is
13 that right?

14 A. Yes.

15 Q. And at the top it says; guys as of
16 right now we have 11 people committed to the
17 meeting Saturday via the Facebook group.
18 That's not going to fly. What does that mean
19 to you?

20 A. Like, he's saying -- I don't know
21 how to say it. Like, he's pretty much telling
22 us what to do. Makes -- he -- I don't feel
23 like he should be telling me what to do.

24 Q. Like you don't have a choice?

25 A. Right.

1 A. When I came in to work one day.

2 Q. How long ago?

3 A. Couple days ago. Or -- my last day
4 last week. I was coming in -- it was
5 definitely nighttime, so this week. What's
6 today?

7 Q. So let's take a look at the
8 language at the top of Employer 4 -- well,
9 first, how did you see this? Who had the
10 thing?

11 A. Jim Clark had it.

12 Q. And do you know where he got it?

13 A. He said he had asked Ken for
14 copies.

15 Q. And let's take a look at the
16 language here. At the top it says; "During the
17 course of the union campaign. Were you forced
18 to attend any union meetings and faced
19 repercussions for not attending these
20 meetings." Did Mr. Priester ask you that
21 question with this document?

22 A. No.

23 Q. If he had done so, what would you
24 have answered, yes or no to the question were
25 you forced to attend meetings and face

1 repercussions for not coming?

2 A. I would have told him yes.

3 MR. MOORE: I'll pass the witness.

4 HEARING OFFICER PINCUS: Mr. Eberle?

5 MR. EBERLE: Yes.

6 CROSS-EXAMINATION OF LUIGI LOMBARDI

7 BY MR. EBERLE:

8 Q. Mr. Lombardi, do you have a
9 Facebook page?

10 A. Yes.

11 Q. Are you one of those people that is
12 active on Facebook, or are you a person that
13 just watches what other people do?

14 A. I'm active, but not really active.

15 Q. Any idea how many friends you have?

16 A. No idea.

17 Q. More than 20?

18 A. Yes.

19 Q. More than 50?

20 A. Yes.

21 Q. Have you ever unfriended anybody?

22 A. No.

23 Q. Are you aware you can?

24 A. Yes.

25 Q. And have you ever been unfriended

1 Q. Okay. Let me back up then because
2 it wasn't my intention to cause you confusion.

3 I thought you said on direct that
4 after you saw several messages from Mr. Conklin
5 and Mr. Cagney that they made you upset enough
6 that you told your co-workers, We should not go
7 to this meeting because they'll use it to say
8 we support them.

9 A. Right. I did say that. But I
10 didn't say I did not go.

11 Q. Oh. You went anyway?

12 A. Yes.

13 Q. And you understood that you did not
14 have to go.

15 A. Right.

16 Q. It was your choice?

17 A. Right.

18 Q. And you knew that there would be no
19 repercussions from the Union if you chose not
20 to go?

21 MR. MOORE: Objection. Lacks
22 foundation.

23 MR. EBERLE: I think it's cross.

24 HEARING OFFICER PINCUS: Yes.

25 Go ahead, you need to answer.

1 A. What was the question again?

2 Q. I have to ask the reporter to read
3 it.

4 (Record read.)

5 A. I did not know that.

6 Q. What repercussions were you afraid
7 of?

8 A. Anything. Anything from something
9 -- some other employee that did support the
10 Union trying to get back at me at work. Or
11 everybody knows what car I drive. Some people
12 even know where I live.

13 Q. So you had a fear that something
14 might happen?

15 A. Yeah.

16 Q. But did anything -- was there
17 anything that made you specifically fear that
18 someone would go after your car? Did someone
19 say, I'm going to go after your car?

20 A. No.

21 Q. And when you're talking about
22 repercussions, you're talking about
23 repercussions that you feared that your
24 co-workers might take out on you?

25 A. Right.

1 recorded, whether you're talking or on the
2 telephone?

3 A. Not that I know of.

4 Q. If you know you're being recorded,
5 doesn't that -- does that stifle what you're
6 going to say?

7 A. Yeah.

8 Q. You wouldn't want to be as open
9 about things if somebody is taping what you're
10 saying, right, or you'd be more careful?

11 A. Right.

12 Q. Did you know -- do you know whether
13 people were taping conversations and meetings
14 with the company during the course of this
15 Union campaign?

16 A. I heard people were.

17 Q. And how did you hear that?

18 A. Through other employees.

19 Q. And did that make you suspicious of
20 talking to people because of that?

21 A. Yeah.

22 Q. Mr. Eberle asked you if you were
23 punished for -- or if anybody who didn't go to
24 the May 7th meeting was punished; do you
25 remember that question?

1 remember?

2 A. Okay. You are correct.

3 Q. So would that make 40?

4 A. Yes.

5 Q. And out of 40, did you give these
6 five documents that make up Employer's Exhibits
7 2 through 6 to all 40 people?

8 A. No. Not after my conversation with
9 Jim Clark that I was not allowed -- it was
10 illegal for me to circulate this on company
11 time. While I'm on the clock, I can only do
12 N.O.V. business and only N.O.V. business.

13 Q. So the answer to my question is;
14 no, you didn't circulate it to all 40 people?

15 A. Exactly. I told you that twice.

16 Q. Okay. And so, what number of
17 people did you circulate it to?

18 A. The 14 that are signed.

19 Q. And --

20 A. Well, I'm sorry. There was three
21 that didn't sign, so there was 17.

22 Q. And what happened to the other 23?
23 Why didn't they get a chance to fill out your
24 survey?

25 A. I have answered that question once,

1 Q. You had no input from anyone else?

2 A. No. That was off of rumors that we
3 had coerced Ross Lyle.

4 Q. And where did you hear the rumor?

5 A. In the shop.

6 Q. From whom?

7 A. Everywhere.

8 Q. From whom?

9 A. Fellow employees.

10 Q. And isn't it true that you've also
11 been appointed as one of the bargaining unit --
12 bargaining committee members?

13 A. As a negotiator or bargaining or --
14 how do you --

15 Q. Answer either one.

16 A. As a negotiator, yes.

17 Q. Did you come up on your own on
18 Employer's Exhibit 3 -- actually, we're going
19 to go to 4. "Were you forced to attend any
20 union meetings, and faced repercussions for not
21 attending these meetings." Those were thoughts
22 that you just -- man, I need --

23 A. Yes, I did.

24 Q. -- to ask this question?

25 A. Just from rumors.

1 subpoena yet?

2 A. No, I have not.

3 Q. Have you been told whether it's
4 coming?

5 A. Yes, I have.

6 Q. What have you been told?

7 A. Said that it was on its way. It
8 wasn't in your mailbox, and when it arrived I
9 would have it. Because I asked -- if I was
10 being subpoenaed, I would need it for work.

11 Q. Ken, are you a member of Local 95?

12 A. No, sir.

13 Q. Are you a member of the IUOE --

14 A. No.

15 Q. -- the International?

16 A. No.

17 Q. Have you ever been a member of
18 either Local 95 or the IUOE?

19 A. No.

20 Q. Have you been appointed to any
21 positions by Local 95?

22 A. No.

23 Q. Have you been elected to any
24 positions in regard to Local 95?

25 A. Not elected to any positions.

1 the math needed for the election to --

2 Q. Okay. Let's look at page 3 then.

3 And by the way, who all is on this Facebook
4 chat, do you know?

5 HEARING OFFICER PINCUS: Again, just -- you
6 can -- I don't want individual names. So you
7 can say in general who was on there, but I
8 don't want any individual names.

9 A. Yes.

10 Q. And how many of the unit members
11 were on it?

12 A. 26. 27 roughly. At any time
13 people had the ability to enter and leave it.

14 Q. How could somebody enter it?

15 A. By accepting the invite from one of
16 the members to join it.

17 Q. Was everybody invited?

18 A. I don't know that. I didn't invite
19 anybody.

20 Q. Who did the invitations?

21 A. Ken.

22 Q. So you set up the messenger --

23 A. I set up the initial chat and
24 invited Kenneth into the chat.

25 Q. And then you --

1 they don't get numbers to a meeting; is that
2 what you're --

3 A. No.

4 Q. -- is that what you're suggesting
5 here?

6 A. Just not -- thinking that we don't
7 have to go through the election right away. We
8 can take our time and get everyone that wants
9 to talk to us available to talk to us.

10 Q. Why didn't you say that instead of
11 saying we're going to step back?

12 A. That's a term that I would use to
13 say we need to take a break and rethink this.
14 Take a step back.

15 Q. Get there to the meeting with
16 numbers or we're taking a step back. That
17 means we're going to leave you right here.
18 We're going to leave you at the alter. We're
19 going to walk you down this path, and then
20 we're going to leave you at the alter, right?

21 A. I don't believe that's what I was
22 saying, no.

23 Q. Can you see how someone would
24 interpret it that way, though?

25 A. Not really.

1 Q. That's not a reasonable way to look
2 at the language that you wrote?

3 A. I can see how you could get that
4 from typed words, yes.

5 Q. So next page, page 4 of Employer's
6 Exhibit 1; Pretty simple from here, guys. If
7 we don't get people to show at this meeting in
8 person, we may have to walk away. That's you
9 writing again, isn't it?

10 A. Yes. I typed that.

11 Q. And again, you're telling them; Get
12 numbers to a meeting or I'm out of here. We're
13 walking from this.

14 A. We're saying that we could
15 potentially pull the petition and regroup and
16 get everyone that we haven't gotten to talk to
17 yet on the same page.

18 Q. Get numbers or else; that's what
19 that says, isn't it?

20 A. No.

21 Q. Could it be interpreted that way
22 reasonably?

23 A. It could be interpreted that way.
24 I guess.

25 Q. And then, the next sentence;

1 A. I read that in the chat.

2 Q. Did you do anything to discourage
3 that?

4 A. No.

5 Q. Do you see how that could be
6 intimidating?

7 A. No.

8 Q. For someone to surreptitiously tape
9 you? You're careful when somebody is recording
10 you, right? Like today, this guy is recording
11 everything you're saying; you're being careful
12 with what you say, right?

13 A. Okay.

14 Q. Is that right?

15 A. Yes.

16 Q. And when somebody is taping you
17 surreptitiously, you don't know to be careful,
18 right? Did you tell them not to tape after you
19 read that in the chat?

20 A. I never said anything about taping
21 any time. Never mentioned it.

22 Q. You read that and just left it
23 alone?

24 A. I believe that's what it shows. I
25 didn't say anything about that.

1 A. Never seen these.

2 Q. You never seen anything like them
3 before?

4 A. No.

5 Q. Okay.

6 MR. MOORE: Nothing further.

7 HEARING OFFICER PINCUS: Anything further?

8 MR. EBERLE: I have nothing.

9 HEARING OFFICER PINCUS: Just before the
10 witness steps down, could we just get, for the
11 record, the dates -- I don't think it's matched
12 up exactly which dates of each message. So if
13 we could go to page 1.

14 MR. EBERLE: My understanding is
15 page 1 is May 5th, and it's Dave's message, not
16 Mike's.

17 HEARING OFFICER PINCUS: Okay.

18 MR. EBERLE: But it's May 5th.
19 Page 2 is May 4th. Page 3 is either May 2nd or
20 May 3rd. It's got the date of May 4th at the
21 bottom, but I think that's because that's where
22 May 4th picks up. So the message above it
23 either ended on the 2nd or the 3rd. And the
24 last page is May 2nd.

25 HEARING OFFICER PINCUS: That's page 4.